Supreme Court, U.S.
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No. 07-191

In The
Supreme Court of the United States

ISSA B. CONTEH,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

On Petition for Writ of Certiorari to The United States Court of Appeals For The Sixth Circuit

PETITION FOR A WRIT OF CERTIORARI
with Appendix

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July, 2007

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QUESTIONS PRESENTED

When determining the "reasonableness" of a district court sentence under *United States v. Booker*, 543 U.S. 220 (2005), and the Sixth Amendment to the Constitution of the United States, must district courts justify a sentence outside the United States Sentencing Guidelines with a finding of extraordinary circumstances?

Can uncharged, unindicted, and unproven allegations of criminal conduct reasonably be considered as extraordinary circumstances for a sentence outside the United States Sentencing Guidelines?

PARTIES TO THE PROCEEDINGS

All parties to the proceedings are listed in the caption of the case.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Issa B. Contch respectfully requests this Court to issue a Writ of *Certiorari* to review the judgment of the United States Court of Appeals for the Sixth Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals is unreported and is reproduced in Appendix A to this Petition. The order of the district court is unreported and is reproduced at Appendix B.

STATEMENT OF JURISDICTION

The judgment of the Court of Appeals was entered on April 25, 2007. (App. A). No petition for rehearing was filed. Petitioner invokes the jurisdiction of this Court pursuant to 28 U.S.C. § 1254.

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

The Sixth Amendment to the United States Constitution provides, in pertinent part: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury..."

The appendix to this brief includes the Sentencing Reform Act, 18 U.S.C. § 3553. (App. E).

STATEMENT OF THE CASE

The Petitioner, Issa Conteh, was indicted on one count of conspiracy to commit money laundering, nine counts of uttering forged and counterfeit securities, nine counts of bank fraud, and two counts of interstate transportation of counterfeit securities. (App. A-2). Several other defendants were also indicted, including Michael Yanni and Keith Edward Walker. *Id.*

Petitioner, Yanni, and Walker were convicted of conspiracy to launder money, knowingly uttering and possessing counterfeit securities with the intent to deceive while aiding and abetting a co-defendant, and aiding and abetting bank fraud. Petitioner and Yanni were found guilty of knowingly uttering and possessing counterfeit securities with the intent to deceive while aiding and abetting a co-defendant, aiding and abetting bank fraud, and aiding and abetting interstate transport of counterfeit securities. Petitioner and Walker were also convicted of another charge of aiding and abetting interstate transport of counterfeit securities.

A Presentence Investigation was ordered and completed. (App. D). The Guideline Range as determined by the trial court indicated a total offense level of 27 and a criminal history category of I for the Petitioner. (App. C-3). These findings corresponded to a Guidelines Range of

70 to 87 months of imprisonment. *Id.* Defendant Yanni fell into the same Guideline Range. (App. A-36).

The court *sua sponte* imposed a sentence above the Guidelines Range and ordered the Petitioner to serve a sentence of 120 months, a prison term that exceeded the maximum Guideline Range by 53 months. (App. B-3). In contrast, Defendant Yanni was sentenced to a prison term of only 70 months. (App. A-36).

In imposing a sentence exceeding the Guidelines, the trial court found that the Guideline calculations did not adequately reflect the statutory sentencing factors. (App. C-4). Specifically, the court found that Petitioner's criminal activities extended beyond Ohio, that he was involved in recruitment efforts, that the scheme was sophisticated in nature, and there was a possibility of recidivism. *Id.* Finally, the court found that the risk Petitioner posed to the public, the need for a just

punishment, and the need to promote respect for the law, necessitated the increased sentence. (App. C-5).

Petitioner appealed his sentence, along with several other issues, to the United States Court of Appeals for the Sixth Circuit. (App. A). Petitioner argued that his sentence was unreasonable under *United States v. Booker* 543 U.S. 220 (2005). More specifically, Petitioner argued that it was improper, unfair, and an abuse of discretion for the District Court to impose a greater punishment against Petitioner for uncharged, unindicted, and unproven allegations, not proven by proof beyond a reasonable doubt, not found by a jury, and not otherwise admissible except for a very limited purpose at trial.

The Sixth Circuit affirmed the District Court decision in all respects, finding that Petitioner's sentence was reasonable under the circumstances.

REASONS FOR GRANTING THE WRIT

In the opinion below, the Sixth Circuit found that the district court's significantly above-Guidelines sentence was reasonable in light of the factors set out in 18 U.S.C. 3553(a)(1)-(6) (App. A-36). Recently, this Court has held that a court of appeals may apply a presumption of reasonableness to a district court sentence that is within the Guidelines. *Rita v. United States* ___ S.Ct. ___ (2007). This Court has not addressed, however, whether the strength of the justification needed to sustain an outside-Guidelines sentence varies in proportion to the degree of the variance, a proposition to which a number of circuits adhere. *Id.*

This Court has noted that this issue will be considered in *Gall v. United States*, 446 F.3d 884 (8th Cir. 2006), *cert granted*, (No. 06-7949). *Id.* The *Gall* case is a suitable vehicle for resolving the question of whether it is

appropriate, in light of *Booker*, to require that a sentence which substantially deviates from the Guidelines be justified by proportionally. This case raises constitutional issues, as discussed above, which should be reviewed alongside those raised in *Gall*; therefore, Petitioner respectfully requests that these matters be consolidated for oral argument.

CONCLUSION

For the foregoing reasons, the Petition for Writ of *Certiorari* should be granted.

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Nos. 05-3714; 05-3715; 05-3716

**IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

UNITED STATES OF AMERICA,	)
Plaintiff-Appellee,	)
	)
v.	)
	)
ISSA B. CONTEH,	)
MICHAEL YANNI, and	)
KEITH EDWARD WALKER,	)
Defendants-Appellants.	)

ON APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE SOUTHERN DISTRICT OF OHIO

MEMORANDUM OPINION

Before: BOGGS, Chief Judge and DAUGHTREY, Circuit Judges; MILLS, District Judge.*

RICHARD MILLS, District Judge.

I. BACKGROUND

On December 18, 2003, a Federal Grand Jury returned a 23-count Second Superseding Indictment charging Appellants Issa Conteh, Michael Yanni, Keith Edward Walker, and others with conspiracy to commit money laundering, uttering and possessing counterfeit securities, and bank fraud. They pled not guilty to all counts.

A jury trial commenced on February 2, 2004. The next day, Walker moved to represent himself. The district court denied the motion as untimely. Trial then resumed.

The Government called a total of 46 witnesses. The evidence showed that Conteh, Yanni (a/k/a "Mitch Cooper"), and Walker were part of a Columbus, Ohio-based check counterfeiting ring that had ties to New York, New York and Portland, Oregon. Conteh obtained counterfeit checks from an unidentified source and had the checks delivered to him in

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*The Honorable Richard Mills, United States District Judge for the Central District of Illinois, sitting by designation.

Ohio. On at least one occasion, Yanni picked up a bag of checks while in New York and brought them to Conteh in Ohio. Checks were transported from Ohio to Indianapolis, Indiana and Wheeling, West Virginia in order to be cashed. The fake checks appeared genuine, having routing and account information which corresponded to real companies.

Conteh organized the scheme and directed its participants. Yanni and Walker were "middlemen" who recruited college-age men and women to deposit bogus checks and withdraw the proceeds. The people who deposited the bad checks and withdrew the proceeds were called "runners". Yanni and Walker gave the names of the runners to Conteh and Conteh created counterfeit checks made payable to the runners. The runners included James Kombe, Melanie Micah Bowles, Akeshia Monet Jacobs, Sharmila Isaiah, Haniyyah I. Sabir, Shannon D. Weikert, Lemoyne Jackson, Shauna Philabaum, and Nath Chhuom. They often received a portion of the proceeds they withdrew. The runners' numerous withdrawals were timed to avoid detection of the scheme.

Witnesses testified that the runners presented bogus checks to financial institutions as if the checks were genuine. The runners routinely withdrew tens of thousands of dollars in this manner. Runner James Kombe withdrew $27,968 via a bogus check from Vascular Solutions and deposited the

money into his personal account-at Conteh's direction-knowing that Vascular Solutions owed him no money. Kombe had been introduced to Conteh by Yanni in 2000. Kombe testified that Yanni took him to Conteh's home where Conteh provided directions about the check scheme. Another runner, Nath Chuuom, testified that Yanni and Walker jointly recruited her into the scheme, promising her money if she deposited and cashed checks and then remitted the proceeds.

Yet another runner, Shauna Philabaum, was brought into the scheme by "Mitch Cooper", an alias used by Yanni. Yanni had a sexual relationship with Philabaum and promised to help her when she told him that she was pregnant and concerned about her finances. Yanni gave Philabaum a bogus corporate check made payable to her for $54,060.80. Philabaum deposited the check. When the bank advised her it was counterfeit, she phoned Yanni. She explained what happened and Yanni hung up on her. Philabaum subsequently decided to terminate her pregnancy. The district court prohibited Yanni from cross examining Philabaum on this issue and the matter of her intimate relationships with other individuals.

After the district court denied Conteh's motion for a continuance in order to further prepare a cross-examination of witness Mahamadou Tunkara, Tunkara testified. A Gambian

who lived in the United States since 1988, Tunkara recounted how he knew Conteh in Gambia and how Conteh told him about the money he got by depositing bogus checks. Tunkara was in New York at the time of the conversation, but Conteh and Conteh's brother convinced him to move to Denver, Colorado to assist in their scheme. Tunkara arrived in Denver in 1998. The Conteh brothers provided him with false identification and an apartment. Conteh told Tunkara to open a bank account, directed him to deposit a check for about $20,000, and had him withdraw thousands of dollars via an automatic teller machine. The proceeds from these transactions went to Conteh and Conteh carried the money to New York. Conteh informed Tunkara that a similar scheme existed in Portland and that he had plans to expand the operation to other states. Tunkara testified that he pled guilty to bank fraud, received a prison sentence of time served, completed his probation, and paid his restitution.

Conteh's attorney objected to Tunkara's testimony about the Colorado scheme, but the district court admitted it pursuant to Federal Rule of Evidence 404(b). The court issued a limiting instruction explaining that Tunkara's testimony about Conteh's "other acts" was to be considered only with respect to Conteh's intent. Conteh's attorney assumed that law enforcement officers must have made notes or reports about Tunkara's criminal activities and moved for the production of documentary evidence under the Jencks Act, 18

D.S.C. § 3500 *et seq.*, after Tunkara's direct examination. The Government stated that it had no Jencks Act materials to disclose and the district court denied Conteh's motion.

Another witness, Sharmila Isaiah, testified that a bank investigator contacted her and asked her to write a letter of explanation for a counterfeit check she cashed. The letter, which was shown to the jury on an overhead projector, explained that Yanni asked her to deposit the check in her account; that Ikenna Myers called her and told her to write him and Yanni checks from the credited funds; that Myers and Yanni came to Indianapolis to cash the checks; that Myers later told her to withdraw the remaining funds in $5,000 increments; and that Myers and Yanni returned to Indianapolis to pick up the cash. Because the district court ultimately found Isaiah was not a co-conspirator, the letter could not be admitted under Federal Rule of Evidence 802(d)(2)(E). The court struck the letter from the record and instructed the jury to disregard it.

Witness Lemoyne Jackson testified that Walker introduced him to Conteh and that Conteh promised to pay him $500 to cash checks. Walker was with Jackson when Conteh gave Jackson a $24,869.10 check that Jackson thought was "kind of fishy." Walker traveled with Jackson from Columbus to Wheeling to cash the check. When Jackson

cashed it, he gave $24,000.00 to Walker so Walker could deliver the money to Conteh.

During closing arguments, the Government-when recounting how Yanni hung up the phone on Philabaum as she explained that the bank told her the $54,000 check he gave her was bogus-characterized Yanni's reaction as "laughing in [Philabaum]'s face". Subsequently, Yanni's attorney argued that Philabaum was not credible because she was the sort of person who sought money from her boyfriend and mother to pay for her abortion. The Government, in its rebuttal, said:

> And somehow, we are to excuse Yanni's conduct because the word abortion comes into this courtroom. That is more than a red herring, that is a stinking fish, ladies and gentlemen. Yanni's conduct can't be excused on that basis.

Additionally, defense counsel for Benjamin characterized Yanni as the kind of person who uses people for his own purposes.

On February 13, 2004, the jury found Conteh, Yanni, and Walker guilty of conspiring to launder money (Count 1), knowingly uttering and possessing counterfeit securities with the intent to deceive while aiding and abetting a co- defendant

(Counts 2 and 9), and aiding and abetting bank fraud (Counts 11, 12, and 17). Additionally, the jury found Conteh and Yanni guilty of knowingly uttering and possessing counterfeit securities with the intent to deceive while aiding and abetting a co-defendant (Counts 3-8 and 10), aiding and abetting bank fraud (Counts 13-16, 18 and 19), and aiding and abetting interstate transport of counterfeit securities (Count 21). Conteh and Walker were also convicted of another aiding and abetting interstate transport of counterfeit securities charge (Count 22).[1]

At the April 2005 consolidated sentencing hearing, the district court sentenced Conteh to 120 months in prison and ordered him to pay restitution of $282,214.93. Yanni received a sentence of70 months in prison and, like Conteh, was ordered to pay restitution of $282,214.93. Walker was sentenced to 48 months in prison and ordered to pay $215,296.39 in restitution. The district court used the 2000 Sentencing Guidelines in an advisory fashion to impose sentences, as required by *United States v. Booker*, 543 U.S. 220 (2005).

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[1]The remaining charges in the indictment, a forfeiture claim (Count 23) and an aiding and abetting charge (Count 2), are not at issue on appeal

The Appellants timely appealed their convictions and sentences. For the reasons that follow, we affirm the district court in all respects.

II. JURISDICTION

This court has appellate jurisdiction pursuant to 28 U.S.C. § 1291 and 18 U.S.C. § 3742(a)(1).

III. ANALYSIS

A. Walker's Motion to Represent Himself

A defendant has a Sixth Amendment right to conduct his own defense. See *Faretta v. California*, 422 U.S. 806, 95 S. Ct. 2525, 45 L.Ed.2d 562 (1975). A district court's denial of a defendant's request for self-representation is reviewed for an abuse of discretion. See *Robards v. Rees*, 789 F.2d 379,384 (6th Cir. 1986).

In Robards, a defendant moved to represent himself after trial had begun. The district court denied the motion and this court affirmed because the "request for self-representation, if honored, would have impermissibly delayed the commencement of the trial .... [T]he trial judge would have been obliged to postpone the commencement of the trial for an extended period of time in order to allow [the defendant] a sufficient amount of time to prepare his

defense." *Id.* at 384. Thus, the court determined that the trial court did not abuse its discretion by denying the motion. *Id.*

Like the defendant in *Robards*, Walker's motion for self-representation was filed after trial began. The motion was untimely and the district court did not abuse its discretion by denying it. *Id.*

B. Sufficiency of the Evidence Challenges

A challenge to the sufficiency of the evidence is reviewed *de novo*. *United States v. Tocco*, 200 F .3d 401, 424 (6th Cir. 2000). When the denial of a motion for judgment of acquittal for insufficiency of the evidence under Federal Rule of Criminal Procedure 29 is challenged on appeal, "the standard of review is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime ... " *United States v. Clay*, 346 F.3d 173, 176 (6th Cir. 2003) (quoting *United States v. Jones*, 102 F.3d 804,807 (6th Cir. 1996)). The appeals court "may conclude a conviction is supported by sufficient evidence even though the circumstantial evidence does not remove every reasonable hypothesis except that of guilt." *Id.*

1. Aiding and Abetting

To convict a defendant of aiding and abetting another to commit a crime, the Government must prove beyond a reasonable doubt that a defendant in some way associated himself with the venture "such that his participation [was] intended to bring about the crime or make it succeed." See *United States v. Clark*, 928 F.2d 733, 736 (6th Cir. 1991) (discussing 18 D.S.C. § 2). Thus, aiding and abetting involves (1) an act by a defendant which contributes to the execution of a crime; and (2) the intent to aid in its commission. *United States v. Lowery*, 60 F.3d 1199, 1202 (6th Cir. 1995) (citations and internal quotation marks omitted).

Conteh contends that he is entitled to acquittal on Counts 2, 3, 4, 5, 8, 9, 10, 11, 12, 13, 14, 17, 18, 19, 20, and 21 because the Government failed to prove that he specifically aided and abetted the people involved in the transactions or knew of the specific transactions. Conteh was not named in Count 20 and so he was not convicted of that offense. He fares considerably worse with respect to the remaining charges.

The record shows that Conteh provided middlemen Yanni and Walker with counterfeit checks totaling $436,000. (JA 2377). Yanni and Walker gave these checks to the runners. (JA 1216, 1225, 1226, 1230, 1320-23; 1624). Conteh directed those below him with respect to depositing, cashing,

and withdrawing the ill-gotten funds. (JA 1378-88; 1624-42). This evidence amply proves that Conteh contributed to the execution of the crimes and intended to aid their commission. There is no requirement that Conteh know of each individual transaction or of each specific individual engaged in each transaction. *United States v. Lawson*, 872 F.2d 179, 181 (6th Cir. 1989).

Counts 6 and 7 alleged Yanni aided and abetted Kombe by causing Kombe to possess and utter two counterfeit checks (one for Vascular Solutions, Inc. and one for Poly-Tex, Inc.). Counts 15 and 16 used the same language to charge Yanni with bank fraud. Yanni contends that there was insufficient evidence to convict him on these counts because Kombe denied that Yanni supplied him with the checks or directed him with respect to cashing them, etc. (JA 1384). Kombe stated that all of his dealings were with Conteh and Conteh's girlfriend Chhuom. (JA 1382-89; 1395; 1479). However, Kombe also stated that he and Yanni were still good friends and this statement suggests that Kombe may have been trying to minimize his friend's guilt. (JA 1377). In any event, Kombe's testimony provides sufficient evidence to uphold Yanni's convictions on Counts 6, 7, 15, and 16. Kombe testified how Yanni introduced him to Conteh, told him that Conteh could help him out financially, took him to Conteh's home where Conteh explained about the scheme, and was present when Chhuom wrote Conteh a check in order

to launder funds. (JA 1378, 1388, 1395, 1382). This evidence shows that Yanni contributed to the execution of the crimes by enlisting Kombe, and that Yanni intended to use Kombe to aid the counterfeiting and bank fraud scheme.

Counts 8 and 12 allege that Yanni aided and abetted Chhuom in the possession and uttering of a counterfeit Alzheimer's Association check and that he "caused" bank fraud by having her cash it. Yanni asserts that because Chhuom testified "either Mr. Walker or Mr. Yanni" instructed her to deposit the check, the evidence does not prove the aiding and abetting charges in Counts 8 and 12. (JA 1230). Yanni is incorrect. The evidence showed that both Yanni and Walker persuaded Chhuom to be a runner and that she would get money for depositing bogus checks in her account. (JA 1210, 1207). While Chhuom could not say for certain who told her to cash the Alzheimer's Association check, she clearly stated that Yanni and Walker recruited her into the scheme and directed her actions. (JA 1230). This is sufficient to support Yanni's aiding and abetting convictions.

Walker contends that there is insufficient evidence to support his aiding and abetting convictions, Counts 2,11, and 12. Like Yanni, Walker attacks Chhuom's testimony because she could not say for certain who instructed her to cash the bogus Alzheimer's Association and Allied Office Products checks. (JA 1216; 1225; 1226; 1230; 1320-23). Walker's

argument fails for the same reason Yanni's failed. By testifying that both Yanni and Walker recruited her and directed her actions, Chhuom provided sufficient evidence to convict Walker.

Walker also contests his conviction on Count 22. Count 22 charged Walker with transporting in interstate commerce, with unlawful intent, falsely made, forged and altered securities, knowing the same to have been falsely made, forged and altered, in violation of 18 D.S.C. §§ 2314 and 2. The charge arose from Jackson's effort to drive from Columbus, Ohio to Wheeling, West Virginia for the purpose of cashing a bogus $24,869.10 check that was made out to Jackson from Farmer's Cooperative Grain Supply.

Although Walker contends otherwise, Jackson's testimony shows that Walker recruited him into the scheme. Jackson testified that Walker introduced him to Conteh. (JA 1624). Jackson said Walker was with him when Conteh gave him the $24,869.10 check and that Walker traveled with him from Columbus to Wheeling to cash it. (JA 1628; 1635). Jackson thought the check was "kind of fishy," but Conteh promised to pay him $500 if he cashed it. (JA 1632). Jackson cashed the check and gave $24,000.00 to Walker so Walker could deliver it to Conteh. (JA 1642). This testimony shows that Walker recruited Jackson into the scheme. Walker's presence throughout the interstate transportation and cashing

of the bogus check was intended to support and aid Jackson's completion of the illegal transaction. Accordingly, there is sufficient evidence to support Walker's aiding and abetting conviction.

2. Conspiracy to Commit Money Laundering Convictions

In order to convict a defendant of money laundering, the government must prove beyond a reasonable doubt that the defendant engaged in the financial transaction knowing that the transaction was designed in whole or in part to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity. See *United States v. Elder*, 90 F.3d 1110, 1124 (6th Cir. 1996) (citing 18 D.S.C. § 1 956(a)(l)(B)(i)). In *United States v. Garcia-Emanuel*, 14 F.3d 1469 (lath Cir. 1994), the Tenth Circuit explained:

> [A] variety of types of evidence have been cited by this and other circuits as supportive of evidence of intent to disguise or conceal. They include, among others, statements by a defendant probative of intent to conceal; unusual secrecy surrounding the transaction; structuring the transaction in a way to avoid attention; depositing illegal profits in the bank account of a legitimate business; highly irregular features of the transaction; using third parties to conceal the real owner; a series

> of unusual financial moves cumulating in the transaction; or expert testimony on practices of criminals.

Id. at 1475-76 (citations omitted). This court has adopted Garcia-Emanuel's interpretation of § 1956(a)(l)(B)(i) and applies it to the intent element of a money laundering conviction. See *United States v. Marshall*, 248 F.3d 525,539 (6th Cir. 2001).

In Conteh, Yanni, and Walker's estimation, the withdrawal of funds from the runners' accounts does not constitute concealment. As support for their position, Conteh, Yanni, and Walker cite *United States v. McGahee*, 257 F.3d 520 (6th Cir.1996). In *McGahee*, a city employee approved a series of illegal disbursements to a building contractor. The disbursements included funds from a Housing and Urban Development block grant. The contractor deposited the funds into his personal business checking account. *Id.* at 524-25. The contractor was tried and convicted of conspiracy to commit money laundering. *Id.* at 525. On appeal, this court determined that there was insufficient evidence to support the charge. The court found the contractor merely diverted funds into his personal account and that diverting funds did not prove intent to conceal them. *Id.* at 528.

Unlike the contractor in *McGahee*, Appellants Conteh, Yanni, and Walker recruited third parties-the runners-to deposit and cash checks using the third parties' accounts. At Conteh, Yanni, and Walker's direction, the runners withdrew money and delivered the proceeds to them. (JA 1216, 1225, 1226, 1230, 1320-23; 1378-88; 1624-42). Conteh, Yanni, and Walker used these systematic deposits and withdrawals to help avoid detection of their scheme and to launder its proceeds. These transactions show that Conteh, Yanni, and Walker intended to conceal funds. Thus, there is ample evidence to prove the money laundering conspiracy. The McGahee decision does not help Conteh, Yanni, and Walker's cause.

C. Conteh and Yanni's Motion for Mistrial

The court uses an abuse of discretion standard when it reviews the denial of a motion for mistrial. See *United States v. Anderson*, 353 F.3d 490,502 (6th Cir. 2003). Conteh and Yanni argue that the district court erred when it admitted witness Tunkara's testimony about the Colorado-based scheme under Rule 404(b). The court uses a three-step process to review admission of evidence pursuant to Rule 404(b):

> First, we review for clear error the district court's factual determination that sufficient

> evidence exists that the other acts occurred. Second, we review de novo whether the district court correctly determined that the evidence was admissible for a legitimate purpose. Third, we review for abuse of discretion the district court's determination that the "other acts" evidence is more probative than prejudicial under Rule 403.

United States v. Matthews, 440 F.3d 818,828 (6th Cir.2 006) (citing *United States v. Comer*, 93 F.3d 1271, 1277 (6th Cir. 1996)).

The district court thoroughly considered Tunkara's testimony before admitting it under Rule 404(b). The court heard Tunkara testify about how he knew Conteh in Gambia, associated with him in the United States, spoke with him about the scheme while in New York, heard how Conteh recruited other Gambians to participate in the scheme, moved to Denver to assist Conteh's scheme, received false identification from Conteh and Conteh's brother, and lived in a Denver apartment that Conteh secured for him. Based on this testimony, the district court reasonably concluded that the Colorado scheme existed.

Because Conteh was charged with specific intent offenses, the Government was entitled to admit evidence of "other acts" to prove intent. See *United States v. Everett*, 270

F.3d 986, 991 (6th Cir. 2001) (stating that bank fraud is a specific intent crime); *United States v. Spikes*, 158 F.3d 913,930 (6th Cir. 1998) ("Rule 404(b) evidence is admissible to prove intent if specific intent is a statutory element of the offense.") (citations omitted). Case law also supports the admission of such evidence under Rule 404(b) to establish *modus operandi*. *See United States v. Perry*, 438 F.3d 642,648 (6th Cir. 2006).

This leaves us only to consider whether evidence of the Colorado scheme was admissible under Rule 403. In reviewing whether evidence is admissible under Rule 403, the court "look[s] at the evidence in a light most favorable to its proponent, maximizing its probative value and minimizing its prejudicial effect." *United States v. Zipkin*, 729 F.2d 384, 389 (6th Cir.1984). The evidence of the Colorado scheme was highly probative because it demonstrated Conteh's intent to commit a specific type of financial crime. Such probative value surpasses any prejudicial effect. *See United States v. Fraser*, 448 F.3d 833,840-41 (6th Cir. 2006) (admission of excerpts from author's book *The Birth of a Criminal*, which described how to commit a counterfeiting crime, were admissible to show intent to commit counterfeiting).

Furthermore, the district court instructed the jury to consider the evidence of the Colorado scheme only with respect to Conteh's intent. *See Perry*, 438 F.3d at 649 (district

court did not abuse its discretion in admitting evidence of "other acts" where it gave the jury an appropriate limiting instruction). The jury is presumed to have followed the instruction. Thus, Conteh and Yanni cannot show that the evidence of the Colorado scheme confused the jury. Because the district court properly admitted Tunkara's testimony and gave an appropriate limiting instruction, there was no error and no basis for a mistrial.

D. Conteh's Motion for a Continuance

A trial court's decision to deny a continuance is reviewed for an abuse of discretion. *United States v. Crossley*, 224 F.3d 847,854 (6th Cir. 2000). When a continuance is denied, the defendant must demonstrate actual prejudice resulting from the denial. He must demonstrate that a continuance would have made relevant witnesses available or added something significant to the defense. *Id.* at 855.

Conteh unsuccessfully moved to continue the trial so he could better prepare to cross examine Tunkara about the Denver scheme. Conteh speculates that a continuance would have allowed him time to find impeachment material, exculpatory evidence, etc. However, Conteh identifies no relevant witnesses or evidence that he would have used at trial if a continuance had been allowed. Conteh, therefore, cannot establish an abuse of discretion.

E. Sharmila Isaiah's Testimony

"We review the district court's evidentiary decisions for abuse of discretion, and we will reverse only when we find that such abuse of discretion has caused more than harmless error." Cooley v. Carmike Cinemas, Inc., 25 F.3d 1325, 1330 (6th Cir. 1994). "The harmless error standard calls for reversal when the appellate court lacks a fair assurance that the outcome of a trial was not affected by evidentiary error. We shall, therefore, reverse the lower court only if we are firmly convinced that a mistake has been made." *McCombs v. Meijer, Inc.*, 395 F.3d 346, 358 (6th Cir. 2005) (citations and quotation marks omitted).

Yanni argues that the district court erred when it admitted Sharmila Isaiah's testimony. Isaiah testified that a bank investigator contacted her and asked her to write a letter of explanation for a counterfeit check she cashed. The letter, which was shown to the jury on an overhead projector, explained that Yanni asked her to deposit the check in her account; that Ikenna Myers called her and told her to write him and Yanni checks from the credited funds; that Myers and Yanni came to Indianapolis to cash the checks; that Myers later told her to withdraw the remaining funds in $5,000 increments; and that Myers and Yanni returned to Indianapolis to pick up the cash. (JA 625-26). Because the district court ultimately found Isaiah was not a coconspirator,

the letter could not be admitted under Fed. R. Evid. 802(d)(2)(E). (JA 2157). Thus, the district court excluded the letter as hearsay, but allowed the testimony to remain in evidence. (JA 2157).

While Yanni may have been prejudiced by Isaiah's testimony, the abundance of evidence discussed throughout this opinion proves his involvement in the scheme. Furthermore, the district court had the letter removed from evidence and instructed the jury to entirely disregard any evidence ordered stricken. (JA 2157, 2203) As this court explained in *United States v. Blakeney*, "properly prepared curative instructions are often sufficient to cure any prejudice resulting from the jury hearing inadmissible evidence." 942 F.2d 1001, 1030 (6th Cir.1991) (citations omitted). Here, the district court's instruction cured any prejudice Yanni suffered.

F. Conteh's Fed. R. Evid. 804(b)(3) Assertions

The district court prohibited Conteh from introducing hearsay in the form of recorded conversations between Yanni and Chuuom. Hearsay is admissible under Rule 804(b)(3) as a statement against interest if it was "at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject the declarant to civil or criminal liability ... that a reasonable person in the declarant's position would not have made the statement unless believing

it to be true." Fed. R. Evid. 804(b)(3). Moreover, Rule 804(b)(3) provides: "A statement tending to expose the declarant to criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement." *Id.*

The district court reviewed the recorded conversations and determined that Yanni's statements about traveling to New York, staying there, and having a contact were "vague" and, in context, "were not the kinds of statements that a person in Yanni's position ... would have any reason to believe that they could subject him to any criminal liability .... They are not an admission of a crime of any kind. They do not on their face relate to any criminal activity of any kind. So they just don't fit the definition of the statement against interests [*sic*] as defined by the rule." (JA 1283-84). The district court's assessment of the recorded conversations and its application of Rule 804(b)(3) are both correct. Thus, the court did not abuse its discretion by barring the recordings.

G. Hearsay and "Best Evidence"

Federal Rule of Evidence 801(c) defines hearsay as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered as evidence to prove the truth of the matter asserted." Id. Under the "best evidence" rule, "[t]o prove the content of a writing, recording, or

photograph, the original writing, recording, or photograph is required, except as otherwise provided in these rules or by Act of Congress." Fed. R. Evid. 1002.

Conteh and Yanni contend that the district court erroneously admitted hearsay and evidence that violated the "best evidence" rule. The alleged Rule 802 violations stem from Myers, Kombe, and Tunkara's testimony. Myers testified that he opened an envelope that contained what appeared to be a bogus check. (JA 1015). The envelope was addressed to Issa Conteh and identified "Hamidou" on the return address. *Id.* Kombe testified about two checks he received from Conteh. (JA 1415-1423). Tunkara testified about checks used in Conteh's Colorado scheme. The defense objected to all of this testimony, but the district court overruled their objections. (JA 1017-18; 1417-20; 1862-69; and 1953).

Under Federal Rule of Evidence 80 1 (d)(2)(E), a "statement is not hearsay" if it is "a statement by a coconspirator of a party during the course and in furtherance of the conspiracy." Because Myers, Kombe, and Tunkara all conspired with Conteh, their testimony about documents they saw was not hearsay. Id. Moreover, the best evidence rule does not apply here because the witnesses testified from their personal knowledge. *D'Angelo v. United States*, 456 F. Supp. 127,131 (D.Del. 1978) ("The [best evidence] rule is not

applicable when a witness testifies from Personal [*sic*] knowledge of the matter, even though the same information is contained in a writing.").

H. Philabaum's Testimony & Fed. R. Evid. 403

The court reviews a district court's determinations under Fed. R. Evid. 403 for an abuse of discretion. See *United States v. Sassanelli*, 118 F.3d 495,498 (6th Cir. 1997). A district court has "very broad" discretion to determine whether the danger of undue prejudice outweighs probative value. *See United States v. Vance*, 871 F.2d 572,576 (6th Cir.1989).

Philabaum testified that, prior to becoming a runner, she told Yanni that she was pregnant, scared, and on her own. (JA 1499). She asked Yanni for help and he promised to pay her medical bills. (JA 1504). Yanni gave her a $54,060.80 check and Philabaum deposited it in her account. (JA 1504, 1527). She withdrew money from the account at Yanni's direction, including $13,027.98 of her own college savings. (JA 1507, 1503). When the bank advised her that the check Yanni gave her was bogus, Philabaum called Yanni and told him what the bank said. (JA 1515-17). Yanni hung up the phone. (JA 1517). Philabaum subsequently got sick, her baby died *in utero*, and she had to have her pregnancy medically terminated. (JA 1518).

Yanni objected to Philabaum's testimony about her pregnancy, arguing that it was inadmissible under Rule 403. (JA 1498). The district court overruled Yanni's Rule 403 objection after the Government explained that the pregnancy was relevant because Yanni was able to convince her to pass a bogus $54,000 check by saying that the money would be used to support her and the baby. (JA 1498-99). Based on Philabaum's testimony, the district court could conclude that her relationship with Yanni was probative of her trust and dependence on him. Her circumstances and the trust she had in Yanni led her to cash the check and withdraw funds at his direction. Yanni was not unfairly prejudiced by this testimony. Therefore, the admission of Philabaum's testimony did not violate Rule 403.

Yanni also argued that because Philabaum alleged he got her pregnant, the district court should have permitted him to cast doubt on her veracity by questioning her about her sexual relationships. (JA 1533). Philabaum's sexual relationships were only probative to the extent they explained why she participated in the scheme. Questions about her other sexual relationships were irrelevant to her motives and would have only undermined her character. Rule 403 does not allow such unfairly prejudicial questioning.

I. The Government's and Benjamin's Closing Arguments

Whether remarks by a prosecutor amount to prosecutorial misconduct and whether they rendered the trial fundamentally unfair are mixed questions of law and fact that are reviewed *de novo*. *United States v. Francis*, 170 F.3d 546,549 (6th Cir. 1999). This court, however, reviews only for plain error "[w]here, as here, a criminal defendant has failed to object below ...." *United States v. Emuegbunam*, 268 F.3d 377,406 (6th Cir. 2001). "Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court." *Id.* (quoting Fed. R. Crim. P. 52(b)). "To establish plain error, a defendant must show that: (1) an error occurred in the district court; (2) the error was obvious or clear; (3) the error affected defendant's substantial rights; and (4) this adverse impact seriously affected the fairness, integrity, or public reputation of the judicial proceedings." *Id.* (citing *United States v. Kingsley*, 241 F.3d 828,835-36 (6th Cir. 2001)).

"When reviewing claims of prosecutorial misconduct, we determine first whether the statements were improper." *Francis*, 170 F.3d at 549. If they were improper, then we look to see if they were flagrant and warrant reversal. *Id.* To determine flagrancy, the standard set by this court is: 1) whether the statement tended to mislead the jury or prejudice

the defendant; 2) whether the statements were isolated or among a series of improper statements; 3) whether the statements were deliberately or accidentally before the jury; and 4) the total strength of the evidence against the accused. *Francis*, 170 F .3d at 549-50 (citations omitted).

Yanni contends his attorney should have objected during closing argument to two comments by the Government. First, when recounting how Yanni hung up the phone on Philabaum as she explained that the bank told her the $54,000 check he gave her was bogus, the Government characterized Yanni's reaction as "laughing in [Philabaum]'s face". (JA 1298). Second, after Yanni's attorney argued that witness Philabaum was not credible because she was the sort of person who sought money from her boyfriend and mother to pay for her abortion, the Government offered this rebuttal:

> And somehow, we are to excuse Yanni's conduct because the word abortion comes into this courtroom. That is more than a red herring, that is a stinking fish, ladies and gentlemen. Yanni's conduct can't be excused on that basis.

(JA 2198-99).

While the prosecutor's remarks may have been inappropriate, the context in which he offered his characterizations means that his remarks cannot have misled the jury or caused prejudice. The comments were isolated, spontaneous responses to Yanni's closing remarks and minimally prejudicial given the total strength of the evidence against Yanni. The comments do not amount to prosecutorial misconduct.

Yanni also complains that Benjamin's attorney called him a "hardened criminal" and described him as a selfish opportunist who deceived people. (JA 2166; 2170). Based on the evidence, this characterization is a fair comment on the evidence. Accordingly, Yanni cannot show error.

As a final matter, Yanni contends that his counsel was ineffective because he did not object to the above comments. Ineffective assistance of counsel claims are more properly brought in a habeas petition under 28 D.S.C. § 2255. See *United States v. Seymour*, 38 F.3d 261 (6th Cir. 1994).

J. Cumulative Error

Errors that appear harmless in isolation may cumulatively amount to a denial of due process. *Walker v. Engle*, 703 F.2d 959, 963 (6th Cir. 1983). A "cumulative-error analysis should evaluate only the effect of

matter [s] determined to be in error, not the cumulative effect of non-errors." *McKinnon v. Ohio,* No. 94-4256, 1995 WL 570918, at *12 (6th Cir. Sept. 27, 1995) (unpublished opinion) (quoting United States v. Rivera, 900 F .2d 1462, 1471 (lOth Cir. 1990)); *see also Campbell v. United States*, 364 F.3d 727, 736 (6th Cir. 2004).

Yanni alleges the district court erred in allowing parts of Philabaum's testimony on direct, limiting cross-examination of Philabaum, permitting the Government and Benjamin to make various comments during closing arguments, allowing Tunkara to testify about the Colorado scheme, and initially allowing Isaiah to testify about the letter she wrote to the bank. For the reasons explained above, none of these decisions by the district court were errors. Because there was no error, Yanni cannot establish cumulative error.

K. Brady, Giglio and the Jencks Act

The court reviews the materiality of alleged *Brady* violations *de novo* because they present mixed questions of law and fact. *See United States v. Rivalta*, 925 F.2d 596,598 (2d Cir. 1991), *cert. denied*, 502 U.S. 875,112 S.Ct. 215, 116 L.Ed.2d 173. The court reviews a district court's ruling on Jencks Act issues for clear error. *See United States v. Minsky*, 963 F.2d 870,875 (6th Cir. 1992).

The government has long been under an obligation to disclose evidence in its possession that is exculpatory and evidence that might tend to impeach the credibility of a key government witness. *See Giglio v. United States*, 405 U.S. 150,92 S.Ct. 763,31 L.Ed.2d 104 (1972); *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963). *In United States v. Mullins*, 22 F.3d 1365 (6th Cir. 1994), this court further elaborated on the Brady doctrine and noted that *Brady* is concerned only with cases in which the government possesses information which the defendant does not, and the government's failure to disclose the information deprives the defendant of a fair trial. Reversal is only required where "there is a 'reasonable probability' that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine the confidence in the outcome." *Id.* at 1371 (quoting *United States v. Bagley*, 473 U.S. 667, 682 (1985)).

In this case, the Government disclosed plea agreements for its cooperating witnesses (the "runners"). Conteh and Yanni contend that they were prejudiced by the Government's failure to disclose transcripts of the runners' plea proceedings (*i.e.* plea agreements, plea hearing transcripts, *etc.*). Yanni claims that the transcripts would have provided him with material to contest the runners' claims that they lacked guilty knowledge or criminal intent.

Transcripts, so long as they exist, are kept by the clerk of the court and, unless sealed, are available to the public upon request. When transcripts do not exist, they can be created by a court reporter. Transcripts are not information which the government possesses and a defendant does not. Defendants can as easily obtain a transcript from the clerk or court reporter as can the government. The Bradv doctrine did not require the Government to turn over any transcripts. Moreover, there is no error because the Defendants, being aware the runners pled guilty, "'knew or should have known the essential facts permitting [them] to take advantage of any exculpatory information'" and any challenged evidence "'was available to defendant[s] from another source.'" *Id.* at 1371 (quoting *United States v. Clark*, 928 F.2d 733 (6th Cir. 1991)).

The Jencks Act provides that "[a]fter a witness called by the United States has testified on direct examination, the court shall, on motion of the defendant, order the United States to produce any statement ... of the witness in the possession of the United States which relates to the subject matter as to which the witness has testified." 18 U.S.C. § 3500(b). Disclosure of such material "must be made after the witness's direct examination testimony, and is mandatory if the defendant makes a timely motion." *Id.; United States v. Taylor*, 13 F.3d 986, 990 (6th Cir. 1994).

Yanni and Conteh contend that because Tunkara testified about the Colorado scheme on direct examination, the Jencks Act required the Government to disclose any statements he made to the FBI while cooperating with the investigation of the Colorado scheme. Under this court's "Adoption Test," a government report or notes of a witness's statement must be produced "if the notes from the interview were read back to and verified by the witness and if the report summarized the notes without material variation." *United States v. Williams*, 962 F.2d 1218, 1224 (6th Cir.) (quoting *United States v. Arnold*, 890 F.2d 825,829 (6th Cir. 1989)), *cert. denied*, 506 U.S. 892, 113 S.Ct. 264, 121 L.Ed.2d 194 (1992). Conteh and Yanni offered the district court no proof that any statement was adopted or approved by Tunkara. Thus, the district court properly denied Conteh and Yanni's request for apparently nonexistent notes. *See United States v. Farley*, 2 F.3d 645,654-655 (6th Cir. 1993) (finding no Jencks Act violation where defendants failed to satisfy Adoption Test)).

L. Conteh's Sentence

A district court's legal conclusions regarding the Sentencing Guidelines are reviewed *de novo*. The court's factual findings are reviewed for clear error. *See United States v. McDaniel*, 398 F.3d 540,551 n.lO (6th Cir. 2005).

Following United States v. Booker, 543 U.S. 220 (2005), we review a district court's sentence to determine its reasonableness. *United States v. Foreman*, 436 F.3d 638,644 (6th Cir. 2006). This review is both substantive, examining "the length of the sentence," and also procedural, requiring that the district court consider the factors in 18 U.S.C. § 3553(a), including the advisory Guidelines range. *United States v. Webb*, 403 F.3d 373, 383 (6th Cir. 2005) (quoting *Booker*, 543 U.S. at 262-63 (2005)).

The sentencing factors listed in § 3553(a) are:

(1) the nature and circumstances of the offense and the history and characteristics of the defendant;

(2) the need for the sentence imposed-

(A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;

(B) to afford adequate deterrence to criminal conduct;

(C) to protect the public from further crimes of the defendant; and

(D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;

(3) the kinds of sentences available;

(4) the kinds of sentence and the sentencing range established [by the Guidelines] ...

(5) any pertinent policy statement ... by the Sentencing Commission

(6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and

(7) the need to provide restitution to any victims of the offense.

18 D.S.C. § 3553(a).

The district court considered these factors. Prior to imposing sentence, it specifically addressed the $436,000 in loss, the number of victims, Conteh's recruitment efforts, the likelihood that Conteh's criminal activities extended beyond Ohio and the charged offenses, the sophistication of his scheme, the possibility of recidivism given Conteh's history, the risk Conteh posed to the public, the need for a just punishment, adequate deterrence, and the need to promote respect for the law. (JA 2399-2401). Even though Conteh's criminal history of category I and his total offense level of 27 resulted in a Guideline range of 70-87 months, the district court reasonably concluded that the preceding factors necessitated a longer sentence. Contrary to Conteh's

assertions, the fact that Yanni had an identical sentencing range and received a sentence of only 70 months does not make Conteh's sentence comparatively unreasonable. Yanni's involvement was not as extensive as Conteh's and the district court concluded that Yanni was "unlikely" to return to criminal activity. (JA 2370).

M. Yanni's Sentence

The comment to the Guidelines outlines the factors that a district court should consider when deciding whether to enhance a sentence for a leadership role. The factors are: the exercise of decision making authority; the nature of participation in the commission of the offense; the recruitment of accomplices; the claimed right to a larger share of the fruits of the crime; the degree of participation in planning or organizing the offense; the nature and scope of the illegal activity; and the degree of control and authority exercised over others. *See* V.S.S.G. § 3B1.1 cmt. n.4. A defendant need not meet each of these requirements for a district court to enhance his sentence. *United States v. Ospina*, 18 F.3d 1332, 1337 (6th Cir. 1994).

Although Yanni argued that his sentence should not have been enhanced because he was just a middleman, the district court found him to be much more. It increased his base offense under U.S.S.G. § 3B1.1(a), which allows a

four-level enhancement if a defendant is an "organizer or leader of a criminal activity that involved five or more participants or was otherwise extensive." At a minimum, a defendant whose sentence is enhanced under § 3B 1.1 (a) must have been the leader or organizer of at least one participant. *See* U.S.S.G. § 3B1.1, cmt. n.2. Participants include those persons "who were (I) aware of the criminal objective, and (ii) knowingly offered their assistance." *United States v. Anthony*, 280 F.3d 694,698 (6th Cir. 2002).

At a minimum, the record shows that Yanni recruited and directed the criminal actions of Myers, Philabaum, Benjamin, Ingram, Watkins, and Alles. (JA 2285-2292). Yanni planned and organized multiple frauds, provided runners with bogus checks, instructed them to deposit the checks, directed the withdrawal of money, and collected the cash. As the testimony of Jackson and Chhuom shows, Yanni's runners were aware of his criminal objective and knowingly assisted his crimes. *See supra* pp. 11-13. Given these circumstances, the district court correctly imposed a four-level enhancement under § 3B1.1(a).

N. Walker's Sentence

Walker claims the district court erred because it used the 2000 Guideline Manual to sentence him. Because Walker

failed to object, we review for plain error. *United States v. Davis*, 397 F.3d 340,346 (6th Cir. 2005).

Generally, the district court is instructed to apply the version of the Sentencing Guidelines that were in place at the time of a defendant's sentencing, unless applying the current Guidelines would amount to a violation of the *Ex Post Facto* Clause. Id. at 346 (citing U.S.S.G. § 1B1.11(a), (b)(1)(2002)); *see also* Art. I, § 9, c1.3 of the United States Constitution. "The *Ex Post Facto* Clause is implicated where a law punishes retrospectively; a law is retrospective if it changes the legal consequences of acts completed before its effective date." *Davis*, 397 F.3d at 347 (citations and quotations omitted).

When the district court sentenced Walker on April 29, 2005, the November 1, 2004, Sentencing Guidelines were in effect. Walker contends, and the Government assumes *arguendo*, that he would have had a total offense level of 24 under the 2004 Guidelines (calculated by finding a base offense level of 19 per § 2B1.1 and adding 2 levels under § 2S1.1(b)(2)(B) plus another 3 levels under § 3B1.1(b)). Since Walker had a criminal history of category I, his sentencing range would have been 51-63 months in prison. However, the district court used the 2000 Guidelines. (JA 2602). Applying the above-mentioned enhancements, the district court determined that Walker had a total offense level of25 and

criminal history of category I. *Id.* This resulted in a sentencing range of57-71 months. *Id.* The district court recited the relevant factors under 18 U.S.C. § 3553(a) and sentenced Walker to 48 months in prison. *Id.*

Although the district court should have used the 2004 Guidelines instead of the 2000 Guidelines, Walker's sentence of 48 months was 3 months less than the low end of the applicable sentencing range. The Guidelines version the district court used did not adversely affect Walker's sentence. Accordingly, there was no violation of the *Ex Post Facto* clause and no plain error.

O. Enhancement of Walker's Sentence

The district court enhanced Walker's sentence by 3 levels under U.S.S.G. § 3B1.1(b) due to his supervisory role in the offense and it enhanced his sentenced by another 2 levels under § 2S1.1(b)(2) based on the value of laundered funds. Because Walker did not object to the district court's imposition of an enhancement for his aggravating role in the offense, the court reviews only for plain error. *Davis*, 397 F.3d at 346.

Walker alleges that the district court erred by enhancing his sentence based on facts not specifically authorized by the jury's verdict. Walker is incorrect. The law

of this Circuit clearly allows a district court to make factual findings regarding relevant sentencing factors and apply those factors at sentencing. *See United States v. Coffee*, 434 F.3d 887,897-98 (6th Cir. 2006). Accordingly, Walker cannot show plain error.

P. Amount of Loss Attributed to Walker

The court reviews for clear error whether a district court correctly determined the amount of loss attributed to a defendant. *See United States v. Tudeme*, 457 F.3d 577, 581 (6th Cir. 2006). Pursuant to U.S.S.G. § IB1.3(a)(l)(B), a base offense level should be determined as follows:

> [I]n the case of a jointly undertaken criminal activity (a criminal plan, scheme, endeavor, or enterprise undertaken by the defendant in concert with others, whether or not charged as a conspiracy), all reasonably foreseeable acts and omissions of others in furtherance of the jointly undertaken criminal activity, that occurred during the commission of the offense of conviction, in preparation for that offense, or in the course of attempting to avoid detection or responsibility for that offense.

U.S.S.G. § IB1.3(a)(l)(B).

In *United States v. Campbell*, 279 F.3d 392 (6th Cir. 2002), this court held that § IB1.3(a)(l)(B) requires that the district court make *particularized* findings with respect to both the scope of the defendant's agreement *and* the foreseeability of his coconspirators' conduct before holding the defendant accountable for the scope of the entire conspiracy. *Id.* at 400 (emphasis in original). Walker argues that the district court clearly erred because it failed to make particularized findings before determining his amount of loss. Despite Walker's claim, the record shows that the district court made the particularized findings set forth in *Campbell* before holding him accountable. (JA 2290-2386). The district court thoroughly reviewed Conteh, Yanni, and Walker's relationships at the consolidated sentencing hearing. *Id.* After doing so, the court initially determined that the three men were responsible for losses totaling $436,000. (JA 2366-67). However, Walker's attorney argued that Walker should not be held responsible for conduct he was acquitted of with respect to $128,000 in alleged dealings with Shannon Weikert and Kombe. (JA 2377). The district court agreed with this reasoning and reduced Walker's total amount of loss from $436,000 to $308,000. (JA 2379). Because a review of the sentencing transcript shows that the district court made particularized findings as to scope and foreseeability, Walker cannot show the court clearly erred when it determined his total amount of loss. (JA 2367 -79).

IV. CONCLUSION

For the foregoing reasons, we AFFIRM the district court in all respects.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA

V.

Issa B. Conteh

JUDGMENT IN A CRIMINAL CASE FOR OFFENSES COMMITTED ON OR AFTER NOVEMBER I, 1987

CASE NUMBER: 2:03-cr-140-1

Jonathan Tyack. Esq.
DEFENDANT'S ATTORNEY

The defendant was convicted on counts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 ,11, 12, 13, 14, 15, 16, 17, 18, 19, 21, 22 and 23 of the superseding indictment.

Accordingly the defendant is adjudged guilty of such counts which involve the following offenses:

Title and Section	Nature of Offense	Date Offense Concluded	Count Numbers
18 USC 1956 (h)	Conspiracy to launder money	February 13, 2004	1
18 USC 513 (a) & 2	Uttering and possessing a counterfeit security	February 13, 2004	2-10
18 USC 1344 (l) & 2	Bank Fraud	February 13, 2004	11-19
18 USC 2314 & 2	Interstate transportation of counterfeited securities	February 13, 2004	21-22

The defendant is sentenced as provided in pages 2 through of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

IT IS FURTHER ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

IMPRISONMENT

The defendant is hereby committed to the custody of the United . States Bureau of Prisons to be imprisoned for a term of one hundred twenty (120) months on count,. 1, 2. 3, 4, 5, 6. 7, a. 9, 10. 11, 12, 13, 14, 15, 16. 17, 18, 19, 21, and 22 to run concurrent.

[X] The Court makes the following recommendation to the Bureau of Prisons:

[X] The defendant is remanded to the custody of the United States Marshal.

[ ] The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons before 2 p.m. no later than thirty (30) days from this date.

RETURN

I have executed this judgment as follows:

_____

_____

Defendant delivered on _____

to _____

at _____, with a certified copy of judgment.

_____

United States Marshall

By___ _____

Deputy US Marshal

SUPERVISED RELEASE

Upon release from imprisonment. the defendant shall be oh supervised release for a term of three (3) Years on counts 2. 3, 4, 5, 6, 7, 6, 9, 10, 21, 22 to run concurrent and five (5) vears on counts 1, 11, 12, 13, 14, 15, 16, 17, 16. 19 to run consecutive to the term of supervise release imposed on counts 2, 3, 4, 5, 6, 7, 8, 9, 10, 21, and 22.

The defendant shall report to the probation office in the district Which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal. state. or local crime.

The defendant shall not illegally possess a controlled substance.

For offenses committed on or after September 13. 1994:

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter. as directed by the probation officer.

The defendant shall not possess a firearm as defined in 18 USE 921.

If this judgment imposes a fine or a restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine or restitution that remains

unpaid at the commencement of the term of supervised release in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment.

The defendant shall comply with the standard conditions that have been adopted by this court. The defendant shall also comply with any additional conditions set forth below:

The defendant shall pay restitution to the victims of the offense.

STANDARD CONDITIONS OF SUPERVISION

1. THE DEFENDANT SHALL NOT LEAVE THE JUDICIAL DISTRICT WITHOUT THE PERMISSION OF THE COURT OR THE PROBATION OFFICER;

2. THE DEFENDANT SHALL REPORT TO THE PROBATION OFFICER AND SHALL SUBMIT A TRUTHFUL AND COMPLETE WRITTEN REPORT WITHIN THE FIRST FIVE DAYS OF EACH MONTH;

3. THE DEFENDANT SHALL ANSWER TRUTHFULLY ALL INQUIRIES BY THE PROBATION OFFICER AND FOLLOW THE INSTRUCTIONS OF THE PROBATION OFFICER;

4. THE DEFENDANT SHALL SUPPORT HIS OR HER DEPENDENTS AND MEET OTHER FAMILY RESPONSIBILITIES;

5. THE DEFENDANT SHALL WORK REGULARLY AT A LAWFUL OCCUPATION UNLESS EXCUSED BY THE PROBATION OFFICER FOR SCHOOLING, TRAINING, OR OTHER ACCEPTABLE REASONS;

6. THE DEFENDANT SHALL NOTIFY THE PROBATION OFFICER WITHIN 72 HOURS OF ANY CHANGE IN RESIDENCE OR EMPLOYMENT;

7. THE DEFENDANT SHALL REFRAIN FROM EXCESSIVE USE OF ALCOHOL

8. THE DEFENDANT SHALL NOT FREQUENT PLACES WHERE CONTROLLED SUBSTANCES ARE ILLEGALLY SOLD, USED, DISTRIBUTED, OR ADMINISTERED;

9. THE DEFENDANT SHALL NOT ASSOCIATE WITH ANY PERSONS ENGAGED IN CRIMINAL ACTIVITY AND SHALL NOT ASSOCIATE WITH ANY PERSON CONVICTED OF A FELONY UNLESS GRANTED PERMISSION TO DO SO BY THE PROBATION OFFICER;

10. THE DEFENDANT SHALL PERMIT A PROBATION OFFICER TO VISIT HIM OR HER AT ANY TIME AT HOME OR ELSEWHERE AND SHALL PERMIT CONFISCATION OF ANY CONTRABAND OBSERVED IN PLAIN VIEW BY THE PROBATION OFFICER;

11. THE DEFENDANT SHALL NOTIFY THE PROBATION OFFICER WITHIN SEVENTY-TWO HOURS OF BEING ARRESTED OR QUESTIONED BY A LAW ENFORCEMENT OFFICER;

12. THE DEFENDANT SHALL NOT ENTER INTO ANY AGREEMENT TO ACT AS AN INFORMER OR A SPECIAL AGENT OF A LAW ENFORCEMENT AGENCY WITHOUT THE PERMISSION OF THE COURT;

13. AS DIRECTED BY THE PROBATION OFFICER, THE DEFENDANT SHALL NOTIFY THIRD PARTIES OF RISKS THAT MAY BE OCCASIONED BY THE DEFENDANT'S CRIMINAL RECORD OR PERSONAL HISTORY OR CHARACTERISTICS, AND SHALL PERMIT THE PROBATION OFFICER TO MAKE SUCH NOTIFICATIONS AND TO CONFIRM THE DEFENDANT'S COMPLIANCE.

CRIMINAL MONETARY PENALTIES

The defendant shall pay the following total financial penalties in accordance with the schedule of payments set out below.

Count	Assessment	Fine	Restitution
1	$100.00		$282,214.93
2	$100.00		
3	$100.00		
4	$100.00		
5	$100.00		
6	$100.00		
7	$100.00		
8	$100.00		
9	$100.00		
10	$100.00		
11	$100.00		
12	$100.00		
13	$100.00		
14	$100.00		
15	$100.00		
16	$100.00		
17	$100.00		
18	$100.00		
19	$100.00		
21	$100.00		
22	$100.00		

SCHEDULE OF PAYMENTS

Payments shall be applied in the following order: (1)assessment; (2) restitution; (3) fine principal; (4)cost of prosecution; (5)interest; (6) penalties.

The total fine and other monetary penalties shall be due as follows:

[X] Special Assessment in full immediately.

RESTITUTION

The defendant shall make restitution to the following persons in the following amounts jointly and severally with the respective co-defendants and co-conspirators involved in this offense immediately with any unpaid balance to be paid as a condition of supervised release. The Court waives the requirement of interest on any balance of restitution not paid withing 15 days after judgment:

Fifth Third Bank
21 E. State Street
Columbus, Ohio 43215
$49,536.08

Key Bank
733 Bethel Road
Columbus, Ohio 43214
$49,425.00

Bank One
PO Box 710612
Columbus, Ohio 43271
$59,286.10

Northern Trust Bank
50 S. La Salle Street
Chicago, Illinois 60675
$27,354.78

U.S. Bank
688 N. High Street,
200 Floor
Worthington, Ohio 43085
$38,894.00

M&I Bank
Corporate Security Department
401 N. Segoe Road
Madison, Wisconsin 53705
$18,768.97

First Bank
406 Science Drive
Madison, WI. 53711
$38,950.00

If the defendant, while incarcerated, is working in a non-UNICOR or grade 5 UNICOR job, the defendant shall pay $25.00 per quarter toward defendant's restitution obligation. If working in a grade 1-4 UNICOR job, defendant shall pay 50% of defendant's monthly pay toward defendant's restitution obligation. Any change in this schedule shall be made only by order of this Court.

After the defendant is released from imprisonment, and within 30 days of the commencement of the term of supervised release, the probation officer shall recommend a revised payment schedule to the Court to satisfy any unpaid balance of the restitution. The Court will enter an order establishing a schedule of payments, which shall be a condition of supervised release.

Unless the court has expressly ordered otherwise in the special instructions above, if this judgment imposes a period of imprisonment, payment of criminal monetary penalties shall be due during the period of imprisonment. All criminal monetary penalty payments are to be made to the United States District Court, Office of the Clerk, 85 Marconi Blvd., Room 260, Columbus, Ohio 43215, except those payments made through the Bureau of Prisons' Inmate Financial Responsibility Program.

April 28, 2005
Date of Imposition of Sentence

s\James L. Graham
James L. Graham
United States District Judge

April 29, 2005
Date

NOT FOR PUBLIC DISCLOSURE

Issa B. Conteh
2:03-cr-140-1

REPORT OF STATEMENT OF REASONS FOR IMPOSING SENTENCE

THE COURT ADOPTS THE PRESENTENCE REPORT AND THE PROBATION OFFICER'S GUIDELINE CALCULATIONS WITH THE FOLLOWING CHANGES:

Chapter Three of the U.S.S.G. Manual determinations by court:

The defendant's objection to the two-level enhancement under §3C1.1 for obstruction of justice is granted.

THE COURT ADOPTS THE PRESENTENCE REPORT WITH THESE COMMENTS OR FINDINGS:

The defendant objects to the proposed two-level enhancement under §3C1.1 for obstruction of justice. While the court finds that the threatening statements were made to the wife of the witness in this case, the court finds that there is insufficient evidence to connect these threats to the defendant. This objection is granted.

The defendant objects to the proposed four-level enhancement under §3B1.1(a) for being an organizer or leader of criminal activity that involved five or more participants or was otherwise extensive. The court finds that the criminal activity involved more than five participants. These participants included defendants Conteh, Yanni, Walker, Ingram and Watkins, named as defendants in the instant case, as well as Shannon Weikert, Melanie Micah Bowles, Ikenna Myers, Nath Chhuom, Shauna Philabaum, Justin Alles, Akeshia Monet Jacobs, Haniyyah Sabir, James Kombe and Lemoyne Jackson. The court also finds that the criminal activity was extensive.

The court finds that defendant was an organizer and leader who brought the criminal scheme to Ohio. He associated with his brother in New York in procuring counterfeit checks. He organized the activities that occurred in Ohio, and recruited co-defendant Yanni as his chief lieutenant, along with Walker and Kombe. At his direction, Yanni and Walker recruited other individuals to cash checks. He exercised leadership through the supervision of the activities of Yanni and Walker. He assembled a large organization with an extensive criminal scheme which included the cashing of counterfeit checks totaling over half a million dollars. He was at the top of the organization in Ohio, and was the principal decision maker. The probation officer correctly found that defendant should

receive a four-level enhancement for his role as an organizer or leader, and this objection is denied.

GUIDELINE RANGE DETERMINED BY THE COURT (BEFORE ANY DEPARTURES):

Total Offense Level: 27

Criminal History Category: I

70 to 87 months imprisonment

Cts. 1, 11-19

3 to 5 years supervised releases

Cts. 2-10, 21-22

2 to 3 years supervised releases

$12,500 to $10,000,000 fine

$282,214.93 restitution

$2,100 special assessment

RESTITUTION

Total Amount of Restitution Ordered - $282,214.93

FINE -0-

A fine is waived or below the guideline range because of inability to pay, and defendant's resources are best devoted to restitution.

COURT DETERMINATION FOR SENTENCE OUTSIDE THE GUIDELINE SYSTEM

The court has sua sponte imposed a sentence above the guideline range. The court has considered the sentencing factors in Section 3553(a), including the conditions of the defendant's confinement while awaiting sentencing. The court finds that the guideline calculations do not adequately take into account the statutory sentencing factors as applied to the defendant, and that a reasonable sentence in this case is one other than that called for by the Guidelines.

As to the nature and circumstances of the offense, the court notes that the instant case involved a major check cashing conspiracy involving a substantial loss. The victims in this case included not only the financial institutions which suffered losses, but also the persons recruited to cash the checks who were lured into engaging in criminal activity. Defendant had contact with individuals, including his brother, outside the state of Ohio, who were responsible for obtaining the information about the various businesses necessary to create the counterfeit checks. The court further finds that a higher sentence is necessary for the sentence imposed to reflect the seriousness of the offense, to promote respect for the law, to provide just punishment for the offense. The court further finds that a sentence above the guideline range is necessary to afford adequate deterrence to criminal conduct,

both to the defendant and to others who would come to Ohio and enlist others to create similar criminal enterprises. and to protect the public from further crimes of the defendant. The court finds that the defendant's case also carries a substantial likelihood of recidivism, and that there is a substantial risk to the public of future crimes committed by the defendant.

s\James L. Graham
James L. Graham
United States District Judge

April 29, 2005
Date

IN UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO

UNITED STATES	)	
OF AMERICA	)	
vs.	)	Docket No.CR-2-03-140(001)
ISSA B. CONTEH	)	
aka "Esal"	)	
"Essok"	)	

PRESENTENCE INVESTIGATION REPORT
CONFIDENTIAL

Prepared for: The Honorable James L. Graham Chief
United States District Judge

Prepared by: Beth A. Harris
United States Probation Officer
Columbus, Ohio 43215
(614) 719-3100

Assistant U.S. Attorney
Date E. Williams/Douglas Squires
303 Marconi Boulevard
Suite 200
Columbus, Ohio 43215
(614) 469-5715

Defense Counsel
Jonathan T. Tyack
536 S. High Street
Columbus, Ohio 43215-5605
(614) 221-1341

Offense: Count 1: *Conspiracy to Commit Money Laundering* [18 U.S.C. § 1956(h)] - a Class C felony/ not more than 30 years imprisonment/ $1,000,000 fine/ not more than 5 years supervised release/ $100 special assessment

Counts 2-10: *Uttering and Possessing a Counterfeit Security* [18 U.S.C. §§513(a) and 2] - a Class C felony! not more than 10 years imprisonment! $250,000 fine! not more than 3 years supervised release/ $100 special assessment

Counts 11-19: *Bank Fraud* [18 U.S.C. §§1344(1) and 2] - a Class B felony/ not more than 30 years imprisonment/ $1,000,000 fine/

not more than 5 years supervised release/ $100 special assessment

Counts 21&22: *Interstate Transportation of Counterfeited Securities* [18 U.S.C. §§2314 and 2] - a Class C felony/ not more than 10 years imprisonment/ $250,000 fine/ not more than 3 years supervised release/ $100 special assessment

Release Status: On August 19, 2003, Issa B. Conteh was arrested for the instant offense. He was released on his own recognizance and placed under the supervision of the U.S. Pretrial Services Office. On February 13, 2004, he was ordered detained after he was found guilty by a jury trial.

Detainers: Although it was verified that Mr. Conteh could be deported from the United States after being found guilty of the above mentioned offenses, a detainer has not been placed on the defendant to date.

Codefendants: (002) Michel E. Yanni
aka "Mitch Cooper"
(003) Keith Edward Walker, II
(004) Deepika C. Benjamin
(005) Sharmila B. Isaiah
(006) Joshua C. Ingram
(007) Heather Watkins

Related Cases: Haniyyah Sabir - CR-2-03-152 Nath
Chhuom - CR-2-03-185
Melanie Micah Bowles - CR-2-03-154
Shannon D. Weikert - CR-2-03-153
James T. Kombe - CR-2-03-167
Justin Alles - CR-2-03-157
Kenya Nicole Carpenter - CR-2-03-159
Emeka Anyadoh, Jr. - CR-2-03-148
Lemoyne Jackson - CR-2-03-149
Shauna A. Philabaum - CR-2-03-158
Ikenna Myers - CR-2-03-192
Akeshia Jacobs - CR-2-03-189

Date Report Prepared: March 10, 2004
Date Report Revised: May 7, 2004

Identifying Data:

Date of Birth: 6-17-72

Age:	31
Race:	Black
Sex:	Male
S.S. #:	127-86-0729
FBI#:	To Be Determined
USM#:	66113-061
Other ID #:	Ohio Operator's license# SE974492
PACTS #:	13376
Education:	6 Years
Dependents:	5
Citizenship:	West Africa
Legal Address:	3127 Creighton Place Reynoldsburg, Ohio 43068 (614) 751-9517
Aliases:	"Esal" "Essok"

PART A. THE OFFENSE

Charges and Convictions

1. On September 18, 2003, the Grand Jury for the Southern District of Ohio, Eastern Division, returned a 20 count Indictment charging Issa B. Conteh, a/k1a "Esal"and "Essok", Michel E. Yanni, a/k1a "Mitch Cooper", Keith Edward Walker, II and Deepika C. Benjamin as the defendants in this case.

2. On October 2, 2003, the Grand Jury for the Southern District of Ohio, Eastern Division, returned a 21 count Superseding Indictment charging Issa B. Conteh, a/k/a "Esal"and "Essok", Michel E. Yanni, a/k/a "Mitch Cooper", Keith Edward Walker, II, Deepika C. Benjamin, Sharmila B. Isaiah, and Joshua C. Ingram as the defendants in this case.

3. On December 18, 2003, the Grand Jury for the Southern District of Ohio, Easter Division, returned a 23 count Second Superseding Indictment charging Issa B. Conteh, a/k/a "Esal"and "Essok", Michel E. Yanni, a/k/a "Mitch Cooper", Keith Edward Walker, II, Deepika C. Benjamin, Sharmila B. Isaiah, Joshua C. Ingram, and Heather Watkins as the defendants in this case.

4. Specifically, **Count 1** of the Second Superseding Indictment charges that from on or about May 2000 and continuing through May 2001 and thereafter, Issa

B. Conteh, Michel E. Yanni, Keith Edward Walker, II, Deepika C. Benjamin, Sharmila B. Isaiah, Joshua C. Ingram, and Heather Watkins, did knowingly conspire and agree with each other and diverse persons, both known and unknown to the Grand Jury, to knowingly conduct financial transactions which involved proceeds from specified unlawful activity. These transactions were designed in whole or in part to conceal and disguise the nature, location, ownership, or the control of the proceeds of specified unlawful activity, that is uttering counterfeit securities and bank fraud. This is in violation of 18 V.S.C. §§513(a) and 1344(1).

5. Issa B. Conteh was the leader of the counterfeit check cashing ring which operated out of Columbus, Ohio. This check cashing ring also operated out of Portland, Oregon and New York, New York. Michel E. Yanni and Keith Edward Walker, II were "middlemen" in this counterfeit check cashing ring. Sharmila B. Isaiah, Deepika C. Benjamin, Joshua C. Ingram, and Heather Watkins and others were "runners" in this ring.

6. The manner and means by which the conspiracy was accomplished included that Issa B. Conteh would obtain counterfeit business checks from an unknown

check printer. He would then supply the counterfeit checks to the "middlemen." The middlemen would then recruit "runners" who deposited the counterfeit checks into their savings or checking accounts at various financial institutions throughout the Southern Ohio area, as well as other states. "Runners" also included persons who received proceeds checks from the deposit of the counterfeit check. Issa B. Conteh, Michel E. Yanni, and Keith Edward Walker, II caused money, which had been credited to accounts at several financial institutions upon the deposit of counterfeit checks, to be withdrawn from these accounts before the financial institutions learned the items deposited were counterfeit. On several occasions, withdrawal of the proceeds of the counterfeit checks was accomplished through the distribution of cashier's checks or through personal checks provided to other members of this counterfeit check ring by the "runner" who deposited the check. The defendants conducted financial transactions individually and among themselves in order to conceal and disguise the proceeds of uttering counterfeit securities and bank fraud. This behavior is in violation of 18 U.S.C. §1956(h).

7. **Count 2** charges that on or about May 23, 2000, Issa B. Conteh, Michel E. Yanni, and Keith Edward, II,

with intent to deceive Huntington National Bank in Columbus, Ohio, uttered and possessed a counterfeit security of Allied Office Products, Inc., an organization which operates in or the activities of which affect interstate commerce. Conteh, Yanni, and Walker caused Nath Chhuom to utter and possess a security which had been counterfeited so that it appeared that Allied Office Products, Inc. legitimately had issued its security, when in truth, the security uttered and possessed by Nath Chhuom had been falsely made in its entirety. This is in violation of 18 U.S.C. §§513(a) and 2.

8. **Count 3** charges that on or about September 18, 2000, Issa B. Conteh, Michel E. Yanni, and Keith Edward Walker, II, with intent to deceive Huntington National Bank in Columbus, Ohio, uttered and possessed a counterfeit security of Henshue Construction, Inc., an organization which operates in or the activities of which affect interstate commerce. Conteh, Yanni, and Walker caused Shannon D. Weikert to utter and possess a security which had been counterfeited, so that it appeared that Henshue Construction, Inc. legitimately had issued its security, when in truth, the security uttered by Shannon D. Weikert had been falsely made in its entirety. This is in violation of 18 U.S.C. §§513(a) and 2.

9. **Count 4** charges that on or about May 23, 2000, Issa B. Conteh and Michel E. Yanni, with intent to deceive Huntington National Bank in Columbus, Ohio, uttered and possessed a counterfeit security of the Alzheimer's Association, an organization which operates in or the activities of which affect interstate commerce. Conteh and Yanni caused Haniyyah I. Sabir to utter and possess a security which had been counterfeited, so that it appeared that the Alzheimer's Association legitimately had issued its security, when in truth, the security uttered and possessed by Haniyyah I. Sabir had been falsely made in its entirety. This is in violation of 18 U.S.C. §§513(a) and 2.

10. **Count 5** charges that on or about April 28, 200 I, Issa B. Conteh and Michel E. Yanni, with intent to deceive National City Bank, uttered and possessed a counterfeit security of ARK Transportation, Ltd., an organization which operates in or the activities of which affect interstate commerce. Conteh and Yanni caused Shauna A. Philabaum to utter and possess a security which had been counterfeited so that it appeared that ARK Transportation, Ltd. legitimately had issued its security, when in truth, the security uttered and possessed by Shauna A. Philabaum had

been falsely made in its entirety. This is in violation of 18 V.S.C. §§513(a) and 2.

11. **Count 6** charges that on or about December 29, 2000, Issa B. Conteh and Michel E. Yanni, with intent to deceive Fifth Third Bank, uttered and possessed a counterfeit security of Vascular Solutions, Inc., an organization which operates in or the activities of which affect interstate commerce. Conteh and Yanni caused James T. Kombe to utter and possess a security which had been counterfeited so that it appeared that Vascular Solutions, Inc. legitimately had issued its security, when in truth, the security uttered and possessed by James T. Kombe had been falsely made in its entirety. This is in violation of 18 U.S.C. §§513(a) and 2.

12. **Count 7** charges that on or about January 23, 2001, Issa B. Conteh and Michel E. Yanni, with intent to deceive Fifth Third Bank, uttered and possessed a counterfeit security of Poly-Tex, Inc., an organization which operates in or the activities of which affect interstate commerce. Conteh and Yanni caused James T. Kombe to utter and possess a security which had been counterfeited, so that it appeared that Poly-Tex, Inc. legitimately had issued its security, when in truth, the security uttered and possessed by James T. Kombe

had been falsely made in its entirety. This is in violation of 18 U.S.C. §§513(a) and 2.

13. **Count 8** charges that on or about June 20, 2000, Issa B. Conteh, Michel E. Yanni, and Keith Edward Walker, II, with intent to deceive Huntington National Bank, uttered and possessed a counterfeit security of the Alzheimer's Association, an organization which operates in or the activities of which affect interstate commerce. Conteh, Yanni, and Walker caused Nath Chhuom to utter and possess a security which had been counterfeited, so that it appeared that the Alzheimer's Association legitimately had issued its security, when in truth, the security uttered and possessed by Nath Chhuom had been falsely made in its entirety. This is in violation of 18 U.S.C. §§513(a) and 2.

14. **Count 9** charges that on or about May 31, 2000, Issa B. Conteh, Michel E. Yanni, and Keith Edward Walker, II, with intent to deceive Bank One, uttered and possessed a counterfeit security of the Alzheimer's Association, an organization which operates in or the activities of which affect interstate commerce. Conteh, Yanni, and Walker caused Melanie Micah Bowles to utter and possess a security which had been counterfeited, so that it appeared the

Alzheimer's Association legitimately had issued its security, when in truth, the security uttered and possessed by Melanie Micah Bowles had been falsely made in its entirety. This is in violation of 18 U.S.C. §§513(a) and 2.

15. **Count 10** charges that on or about June 16, 2000, IssaB. Conteh and Michel E. Yanni, with intent to deceive Bank One, uttered and possessed a counterfeit security of Preferred Title LLC, an organization which operates in or the activities of which affect interstate commerce. Conteh and Yanni caused Akeshia Monet Jacobs to utter and possess a security which had been counterfeited, so that it appeared that Preferred Title LLC legitimately had issued its security, when in truth, the security uttered and possessed by Akeshia Monet Jacobs had been falsely made in its entirety. This is in violation of 18 D.S.C. §§513(a) and 2.

16. **Count 11** charges that on or about the period May 1, 2000 through September 30, 2000, Issa B. Conteh, Michel E. Yanni, and Keith Edward Walker, II, along with others, knowingly executed and attempted to execute a scheme or artifice to defraud Huntington National Bank.

17. It was part of the scheme and artifice to defraud that Issa B. Conteh directed Michel E. Yanni and Keith Edward Walker, II to recruit individuals to deposit counterfeit business checks into their existing checking or savings accounts at Huntington National Bank, and then to withdraw the proceeds. Michel E. Yanni and Keith Edward Walker, II would supply the name and address of the individuals they had recruited, as well as the bank where the individuals' savings or checking account were maintained to Issa B. Conteh. Issa B. Conteh would then supply a counterfeit business check to Yanni and Walker. The counterfeit business check would be made payable to the individual that Yanni and Walker had recruited to cash the counterfeit check. Yanni and Walker would then direct the individual to deposit the counterfeit check into their savings or checking account at the Huntington National Bank and then withdraw the proceeds. Issa B. Conteh directed Michel E. Yanni and Keith Edward Walker, II to inform the individuals who cashed the checks the amount of money to be withdrawn from the account and to whom the proceeds were to be distributed.

18. It was part of the scheme and artifice to defraud that Haniyyah I. Sabir, Shannon D. Weikert, and Nath Chhuom were directed by Michel E. Yanni and Keith

Edward Walker, II deposit counterfeit business checks into their accounts at the Huntington National Bank.

19. On or about May 23, 2000, Issa B. Conteh, Michel E. Yanni, and Keith Edward Walker, II, executed and caused to be executed the scheme and artifice as set forth above when they deposited a counterfeit business check of Allied Office Products, Inc., made payable to Nath Chhuom, in the amount of$21,567.54 at the Huntington National Bank. This is in violation of18 U.S.C. §§1344(1) and 2.

20. **Count 12** charges that on or about June 2, 2000, Issa B. Conteh, Michel E. Yanni, and Keith Edward Walker, II, deposited a counterfeit business check of the Alzheimer's Association, made payable to Nath Chhuom, in the amount of $21,567.54 at the Huntington National Bank. This is in violation of 18 D.S.C. §§1344(l) and 2.

21. **Count 13** charges that on or about May 23, 2000, Issa B. Conteh and Michel E. Yanni deposited a counterfeit business check of the Alzheimer's Association, made payable to Haniyyah I. Sabir, in the amount of$27,354.78, at the Huntington National Bank. This is in violation of 18 D.S.C. §§1344(l) and 2.

22. **Count 14** charges that on or about September 18, 2000, Issa B. Conteh and Michel E. Yanni deposited a counterfeit business check of Henshue Construction, Inc., made payable to Shannon D. Weikert, in the amount of $81 ,750.65, at the Huntington National Bank. This is in violation of 18 D.S.C. §§1344(1) and 2.

23. **Count 15** charges that on or about the period December 20, 2000 through December 31, 2000, Issa B. Conteh, Michel E. Yanni, and Keith Edward Walker, II, along with others, knowingly executed and attempted to execute a scheme and artifice to defraud the Fifth Third Bank of Columbus.

24. It was part of the scheme and artifice to defraud that Issa B. Conteh, the leader of this counterfeit check ring, directed Michel E. Yanni and Keith Edward Walker, II to recruit individuals to deposit counterfeit business checks into their existing checking or savings accounts at Fifth Third Bank, and then to withdraw the proceeds. Yanni and Walker would supply the name and address of the individuals they had recruited, as well as the bank where the individuals' savings or checking account were maintained to Issa B. Conteh. Issa B. Conteh would then supply a counterfeit business check to Yanni and Walker. The

counterfeit business checks would be made payable to the individuals that Michel E. Yanni and Keith Edward Walker, II recruited to cash the counterfeit checks. Yanni and Walker would then direct the individuals to deposit the counterfeit check into their savings or checking account at Fifth Third Bank and then withdraw the proceeds. Issa B. Conteh directed Michel E. Yanni and Keith Edward Walker, II to inform the individuals who cashed the checks the amount of money to be withdrawn from the account and to whom the proceeds were to be distributed.

25. It was further part of the scheme and artifice to defraud that James T. Kombe was recruited by Michel E. Yanni and Keith Edward Walker, II to deposit counterfeit business checks into his account at Fifth Third Bank. James T. Kombe opened a savings account at Fifth Third Bank in Columbus, Ohio. On or about December 29, 2000, Issa B. Conteh, Michel E. Yanni, and Keith Edward Walker, II executed and caused to be executed the scheme and artifice as set forth above when they deposited a counterfeit business check of Vascular Solutions, Inc, made payable to James T. Kombe, in the amount of $27,968.54 at Fifth Third Bank of Columbus. This is in violation of 18 U.S.C. §§1344(1) and 2.

26. **Count 16** charges that on or about January 23, 2001, Issa B. Conteh, Michel E. Yanni, and Keith Edward Walker, II, executed and caused to be executed the scheme and artifice as set forth above when they deposited a counterfeit business check of Poly- Tex, Inc., made payable to James T. Kombe, in the amount of $18,895, at Fifth Third Bank. This is in violation of 18 D.S.C. §§1344(1) and 2.

27. **Count 17** charges that on or about the period May 24, 2000 through June 19, 2000, Issa B. Conteh, Michel E. Yanni, and Keith Edward Walker, II, along with others, knowingly executed and attempted to execute a scheme and artifice to defraud Bank One, NA.

28. It was part of the scheme and artifice to defraud that Issa B. Conteh directed Michel E. Yanni and Keith Edward Walker, II to recruit individuals to deposit counterfeit business checks into their existing checking or savings accounts at Bank One, and then to withdraw the proceeds. Yanni and Walker would supply the name and address of the individuals they had recruited, as well as the bank where the individuals' savings or checking account were maintained to Issa B. Conteh. Issa B. Conteh would then supply a counterfeit business check to Yanni and Walker, made payable to the individuals that Michel

E. Yanni and Keith Edward Walker, II recruited to cash the counterfeit check. Yanni and Walker would then direct the individuals to deposit the counterfeit check into their savings or checking account at Bank One and then withdraw the proceeds. Issa B. Conteh directed Michel E. Yanni and Keith Edward Walker, II to inform the individuals who cashed the checks the amount of money to be withdrawn from the account and to whom the proceeds were to be distributed.

29. It was further part of the scheme and artifice to defraud that Melanie Micah Bowles and Akeshia Monet Jacobs were recruited by Michel E. Yanni and Keith Edward Walker, II to deposit counterfeit business checks into their accounts at Bank One, NA.

30. On or about May 31, 2000, Issa B. Conteh, Michel E. Yanni, and Keith Edward Walker, II, executed and caused to be executed the scheme and artifice as set forth above when they cashed a counterfeit business check of the Alzheimer's Association, made payable to Melanie Micah Bowles, in the amount of $34,874.45, at Bank One, NA. This is in violation of 18 V.S.C. §§1344(1) and 2.

31. **Count 18** charges that on or about June 16, 2000, Issa B. Conteh and Michel E. Yanni executed and caused

to be executed the scheme and artifice as set forth above when they deposited a counterfeit business check of Preferred Title LLC, made payable to Akeshia Monet Jacobs, in the amount of $84,768.97, at Bank One, NA. This is in violation of 18 V.S.C. §§ 1344(1) and 2.

32. **Count 19** charges that on or about the period April 28, 2001 through May 15, 2001, Issa B. Conteh and Michel E. Yanni, along with others, knowingly executed and attempted to execute a scheme and artifice to defraud National City Bank. Issa B. Conteh directed Michel E. Yanni to recruit individuals to deposit counterfeit business checks into their existing checking or savings accounts at National City Bank, and then to withdraw the proceeds. Yanni would supply the name and address of the individuals he had recruited, as well as the banks where the individuals' savings or checking accounts were maintained, to Issa B. Conteh. Conteh would then supply a counterfeit business check to Michel E. Yanni, made payable to the individuals that Yanni had recruited to cash the counterfeit check. Michel E. Yanni would then direct the individuals to deposit the counterfeit check into their savings or checking account at National City Bank and then withdraw the proceeds. Issa B. Conteh directed Michel E. Yanni to inform the individuals

who cashed the checks the amount of money to be withdrawn from the account and to whom the proceeds were to be distributed. It was part of the scheme and artifice to defraud that Shauna A. Philabaum was recruited by Michel E. Yanni to deposit counterfeit business checks into her account at National City Bank. On or about April 28, 2001, Shauna A. Philabaum deposited a counterfeit check into a joint savings account at National City Bank.

33. On or about April 28, 2001, Issa B. Conteh and Michel E. Yanni executed and caused to be executed the scheme and artifice as set forth above when they deposited a counterfeit business check of ARK Transportation, Ltd., made payable to Shauna A. Philabaum, in the amount of $54,060.80 at National City Bank. This is in violation of 18 D.S.C. §§1344(l) and 2.

34. **Count 20** charges that on or about the period July 1, 2000, through September 1, 2000, Sharmila D. Isaiah, knowingly and wilfully aided and abetted the execution of a scheme and artifice to defraud Firstar Bank in Cambridge, Ohio.

35. It was part of the scheme and artifice to defraud that Issa B. Conteh directed Michel E. Yanni and Ikenna

S. Myers, to recruit individuals to deposit counterfeit checks into their existing checking or savings accounts and then to withdraw the proceeds. Yanni and Myers would supply the names and addresses of the individuals they had recruited, as well as the banks where the individuals' savings or checking accounts were maintained to Issa B. Conteh. Conteh would then supply a counterfeit check to Michel E. Yanni and Ikenna S. Myers, made payable to the individual who had been recruited to cash the counterfeit check. Yanni and Myers would then direct he individuals to deposit the counterfeit check into their savings or checking accounts and then withdraw the proceeds. Ikenna S. Myers directed Sharmila B. Isaiah regarding the amount of money to be withdrawn from her account and to whom the proceeds were to be distributed.

36. It was part of the scheme and artifice to defraud that on or about July 15, 2000, Michel E. Yanni and Ikenna S. Myers traveled from Columbus, Ohio to Indianapolis, Indiana to meet with Sharmila B. Isaiah and to give her a counterfeit check to deposit into her checking account. On or about July 15, 2000, Sharmila B. Isaiah deposited a counterfeit check, made payable to herself, in the amount of $38,894.74, drawn on the Firstar Bank account of Packaging

Materials, Inc. in Cambridge, Ohio, into her checking account at Indiana Members Credit Union.

37. On or about July 22, 2000 through September 1, 2000, Ikenna S. Myers caused Sharmila B. Isaiah to withdraw the proceeds of the July 15, 2000 fraudulent deposit through cash withdrawals and personal checks. On that date, Sharmila B. Isaiah, at the directed of Ikenna S. Myers, Tote two checks from her account One check was to Ikenna S. Myers for $5,000, and the second check was to Michel E. Yanni for $4,000.

38. On or about July 27, 2000, Sharmila B. Isaiah, at the direction of Ikenna S. Myers, wrote two checks from her account. One check was to Justin Alles for $5,000, and the second check was to Demetrius Bynum for $5,000.

39. On or about July 15, 2000, Sharmila B. Isaiah aided and abetted in the execution of the scheme and artifice as set forth above when Issa B. Conteh, Michel E. Yanni, and Ikenna S. Myers, caused her to deposit a counterfeit check, in the amount of $38,894.74. The check was made payable to Sharmila B. Isaiah, drawn on the Packaging Materials, Inc. account at Firstar Bank in Cambridge, Ohio. She deposited the

counterfeit check into her checking account at Indiana Members Credit Union, which the counterfeit check was then processed through normal banking channels and paid by Firstar Bank in Cambridge, Ohio, thereby causing a loss to Firstar Bank in the amount of $38,894. This is in violation of 18 D.S.C. §§1344(1) and 2.

40. **Count 21** charges that on or about July 15, 2000, Issa B. Conteh and Michel E. Yanni, with unlawful and fraudulent intent, did cause to be transported in interstate commerce from Columbus, Ohio to Indianapolis, Indiana a counterfeit security, that is, Packaging Materials, Inc., dated July 12, 2000, in the amount of$38,894.74. It was made payable to Sharmi Isaiah and drawn on the Packaging Materials, Inc. account at Firstar Bank, knowing the same to be counterfeit. This is in violation of 18 D.S.C. §§2314 and 2.

41. **Count 22** charges that on or about September 8, 2001, Issa B. Conteh and Keith Edward Walker, II, with unlawful and fraudulent intent, did cause to be transported in interstate commerce from Columbus, Ohio to Wheeling, West Virginia, a counterfeit security, that is, Farmer's Co-operative Grain and Supply check, dated September 4, 2001, in the amount of $24,869.10. It was made payable to Lemoyne D.

Jackson and drawn on the Farmer's Cooperative Grain and Supply account at The State Bank of Trenton in Trenton, Nebraska, knowing the same to be counterfeit. This is in violation of 18 U.S.C. §§2314 and 2.

42. **Count 23** is a forfeiture account that states as a result of the conduct in Counts 10 through 18, Issa B. Conteh shall forfeit to the United States all property constituting, or derived from, proceeds he obtained directly or indirectly. He shall forfeit all property, real and personal, involved in the offense and all property traceable to such property, including but not limited to the property as follows: real property valued at approximately $102,000, located at 3127 Creighton Place, Reynoldsburg, Franklin County, Ohio, with all the improvements, appurtenances, and attachments; and a 2002 Cadillac Escalade. This is in violation of 18 V.S.C. §982.

43. On February 13, 2004, Issa Conteh was found guilty of Counts 1 through 19 and 20 and 21. Michel E. Yanni was found guilty of Counts 1 through 19 and 21. Keith Edward Walker, II was found guilty of Counts 1, 2, 9, 11, 12, 17 and 22. Deepika Benjamin was found not guilty. The case against Sharmila Isaiah was dismissed.

44. On January 23, 2004, Heather Watkins appeared before the Honorable James L. Graham, Chief U.S. District Judge, and entered a guilty plea to Count 1 of the Second Superseding Indictment. She is awaiting sentencing pending the completion of a presentence investigation report.

45. On February 2, 2004, Joshua C. Ingram appeared before the Honorable James L. Grahanl, Chief U.S. District Judge, and entered a guilty plea to Count 1 of the Second Superseding Indictment. He is awaiting sentencing pending the completion of a presentence investigation report.

Related Cases

46. On October 8, 2003, Haniyyah I. Sabir appeared before the Honorable Gregory L. Frost, U.S. District Judge, and entered a guilty plea to one count of Uttering and Possessing a Counterfeit Security. He currently awaits sentencing. (Docket #CR-2-03-152)

47. On October 29, 2003, Justin W. Alles appeared before the Honorable George C. Smith, U.S. District Judge, and entered a guilty plea to one count of Interstate Transportation of Counterfeited Securities. He is awaiting sentencing. (Docket #CR-2-03-157)

48. On October 30, 2003, James Kombe appeared before the Honorable Edmund A. Sargus, Jr., U.S. District Judge, and entered a guilty plea to two counts of Uttering and Possessing a Counterfeit Security. He is awaiting sentencing. (Docket #CR-2-03-167)

49. On October 31, 2003, Shauna A. Philabaum appeared before the Honorable Algenon L. Marbley, U.S. District Judge, and entered a guilty plea to one count of Uttering and Possessing a Counterfeit Security. On February 13, 2004, she was sentenced to three years probation. (Docket #CR-2-03-158)

50. On November 10, 2003, Shannon E. Weikert appeared before the Honorable John D. Holschuh, Senior U.S. District Judge, and entered a guilty plea to one count of Uttering and Possessing Counterfeit Securities. On February 19, 2004, she was sentenced to 3 years probation. (Docket #CR-2-03-153)

51. On November 12, 2003, Emeka Anyadoh, Jr. appeared before the Honorable John D. Holschuh, Senior U.S. District Judge, and entered a guilty plea to four counts of Uttering and Possessing a Counterfeit Security. On March 10, 2004, he was sentenced to 3 years probation. (Docket #CR-2-03-148)

52. On November 12, 2003, Lemoyne Jackson appeared before the Honorable John D. Holschuh, Senior U.S. District Judge, and entered a guilty plea to one count of Interstate Transportation of Counterfeit Securities. He is awaiting sentencing pending the completion of a presentence investigation report. (Docket #CR-2-03-149)

53. On November 12, 2003, Kenya Nicole Carpenter appeared before the Honorable John D. Holschuh, Senior U.S. District Judge, and entered a guilty plea to one count of Uttering and Possessing Counterfeit Securities. On February 19, 2004, she was sentenced to 3 years probation. (Docket #CR-2-03-159)

54. On November 25, 2003, Ikenna S. Myers appeared before the Honorable George C. Smith, U.S. District Judge, and entered a guilty plea to one count of Interstate Transportation of Counterfeited Securities. He currently awaits sentencing. (Docket #CR-2-03-192)

55. On November 25, 2003, Akeshia Jacobs appeared before the Honorable George C. Smith, U.S. District Judge, and entered a guilty plea to one count of Uttering and Possessing a Counterfeit Security. She is awaiting sentencing (Docket #CR-2-03-189)

56. On December 15, 2003, Nath Chhuom appeared before the Honorable John D. Holschuh, Senior U.S. District Judge, and entered a guilty plea to two counts of Uttering and Possessing a Counterfeit Security. On March 5, 2004, she was sentenced to 3 years probation. (Docket #CR-2-03-135)

57. Demarco Brown and Lamin Touray are fugitives in this case.

Pretrial Adjustment

58. On August 19, 2003, Issa Conteh was released on his own recognizance and placed under the supervision of the U.S. Pretrial Services Office. Along with abiding by the standard conditions of release, Mr. Conteh was also ordered to reside at 3127 Creighton Place in Reynoldsburg, Ohio; restrict travel to the Southern District of Ohio; and seek and/or maintain verifiable employment. Mr. Conteh remained in compliance through February 13, 2004, when he was found guilty by a jury trial. On that date, he was ordered detained by the Court. He is currently incarcerated at the Franklin County Corrections Center, I, Columbus, Ohio

The Offense Conduct

59. The investigation of the instant offense was conducted by agents from the Federal Bureau of Investigation (FBI), Ohio Bureau of Criminal Identification and Investigation, Franklin County Sheriffs Office, and Columbus Police Department. In August 2001, FBI agents began an investigation into a counterfeit check cashing ring that originated in Columbus, Ohio. This check cashing ring involved more than 20 individuals with a loss to banks and merchants in excess of$450,000. Counterfeit checks were written in amounts ranging from $18,895 to $81,750. Evidence has revealed that the leader of the ring was Issa Conteh operated out of Columbus, New York and Portland, Oregon. As part of the plan, Conteh provided counterfeit checks to "middle men," to include Michel Yanni and Keith Walker, II. Yanni and Walker would then recruit "runners" to cash the counterfeit checks at various banks or merchants throughout the Southern District of Ohio, as well as other states. Included among the runners were Haniyyah Sabir, Nath Chhuom. Demarco Brown, Shannon Weikert, James Kombe, and Lemoyne Jackson, among others.

60. In accordance with the plan, according to business records of The Huntington National Bank (HNB), on May 23, 2000, Haniyyah Sabir deposited a counterfeit

check into her checking account at HNB. HNB is a federally insured financial institution located in Columbus, Ohio. The check, number 75989, was made payable to Haniyyah Sabir in the amount of $27,354.78. It was dated May 19, 2000 and drawn on the account of The Alzheimer's Association in Chicago, Illinois at the Northern Trust Company in Chicago. The Alzheimer's Association is a non-profit organization located in Chicago, Illinois and operates in interstate commerce. Prior to depositing the counterfeit check, Sabir's account balance was $.24.

61. Immediately after the deposit of the counterfeit check, Sabir withdrew the entire $27,354.78 from her account by cashing personal checks or by check card transactions.

62. On August 15, 2000, an employee with The Alzheimer's Association identified the check payable to Haniyyah Sabir as counterfeit. There were three additional counterfeit checks drawn on The Alzheimer's Association account that viere negotiated through this check ring. Based on this illegal behavior, Northern Trust Bank sustained a loss of $27,354.78.

63. In furtherance of the plan to defraud HNB, Nath Chuuom on two occasions, uttered and possessed a counterfeit security of an organization with the intent to deceive another organization. Specifically, she deposited two counterfeit checks into her Huntington National Bank account on or about May 23 and June 2, 2000. Both checks were payable to her and were in the amount of$21,567.54.

64. The first check deposited by Ms. Chhuom was drawn on the Fifth Third Bank account of Allied Office Products, Inc., an office supply company located in Columbus, Ohio that operates in interstate commerce. The check was dated May 19, 2000. On May 25, 2000, $573 was withdrawn from Chuuom's account. Between May 26 and June 2, 2000, Ms. Chhuom wrote four checks totaling $19,552.35 against the proceeds of the counterfeit check deposited into her account. Bank surveillance photographs depicted Ms. Chuuom cashing one of the checks on May 31, 2000 at a teller station. It was in the amount of $8,000. Regarding the other three checks, she cashed another check on May 26, 2000 in the amount of$3,000. On June 1, 2000, she Mote three checks. One check was made payable to Michel Yanni in the amount of $4,500 which he endorsed and cashed on June 4, 2000. The second check was made payable to James

Kom[illegible]n the amount of $4,000 which he endorsed and cashed on June 2, 2000. He provided an endorsing signature, Ohio Identification card, and a thumb print. The third check was in the amount of $52.35. It is unknown who the check was made payable to, yet the check number was #115. The total amount of money withdrawn from the counterfeit check was $20,125.35. Lab reports identified a partial latent fingerprint of Michel Yanni on the check that was provided to James Kombe. Further, an inked impression of Michel Yanni's right thumb was lifted from the check he cashed.

65. On June 2, 2000, the owner of Allied Office Products, Inc. notified Fifth Third Bank that the check payable to Nath Chhuom was counterfeit.

66. On June 2, 2000, Nath Chhuom deposited a second counterfeit check into her HNB account in the amount of $21,567.54. The check was drawn on the Northern Trust Bank account of The Alzheimer's Association. Before Ms. Chhuom could withdraw proceeds from her account from this particular counterfeit check, Northern Trust Bank reported to the FBI that the check payable to Nath Chhuom was counterfeit. Therefore, no loss occurred from the deposit.

67. On December 15, 2000, a confidential source was interviewed by the case agents. According to the source, around June 2000, Nath Chhuom was approached by Keith Walker concerning depositing checks into her checking account on his behalf. Walker paid Ms. Chhuom between $1,500 to $2,000 fore depositing two counterfeit checks into her account. The source knew the checks were approximately $20,000 and were drawn on the accounts of The Alzheimer's Association and Allied Office Products. The source advised that it appeared Keith Walker worked for an individual from Nigeria named Michel Yanni. It appeared Yanni controlled several other males that were involved in depositing counterfeit checks into accounts and making large withdrawals. The source stated Keith Walker gained control of Nath Chhuom's checking account and debit card. He instructed her to sign several blank checks and give them to him.

68. According to the source, Yanni paid Ms. Chhuom $1,000 to fly with him to Portland, Oregon and carry several thousand dollars in cash in her suitcase. While in Oregon, she was introduced to a male individual from Nigeria who went by the name of "Esal." This individual was later determined to Issa Conteh. It

appeared he was in charge of the entire organization and was sending money back to Africa.

69. On June 16, 2000, Akeshia Monet Jacobs deposited a counterfeit check into her Bank One account. The counterfeit check was in the amount of $84,768.97. The check was drawn on the account of Preferred Title LLC at M & I Bank of Madison, Wisconsin. Subsequent to depositing the check, Ms. Jacobs withdrew the proceeds through cash withdrawals and purchasing cashier's checks. She provided cashier's checks in the listed amounts to the following individuals: $7,500 to Deepika Benjamin, $5,600 to Brooke Morgan, $5,000 to Ikenna Myers, and $4,500 to Michael Yanni

70. Once the bank discovered the Preferred Title LLC check was counterfeit, they froze Ms. Jacob's bank account and seized $66,000. Therefore, the loss was determined to be $18,768.97 to M & I Bank.

71. Akeshia Jacobs was later interviewed by FBI agents. She related Michel Yanni provided her with the counterfeit check. She was unaware that the check was not legitimate. He directed her to deposit the check into her account and later asked her to withdraw the funds.

72. On July 15, 2000, Sharmila Isaiah deposited a counterfeit check into her account at Indiana Members Credit Union in Indianapolis, Indiana. The check was in the amount of $38,894.74, and was drawn on the Firstar Bank account of Packaging Materials, Inc., Cambridge, Ohio. Isaiah deposited the check at the direction of Ikenna Myers. Myers obtained the check from Michel Yanni. After the counterfeit check cleared, Myers directed her to withdraw money from the account on two occasions, each for $5,000. She was also told to write out four proceeds checks to him and three other individuals. Myers and Michel Yanni traveled to Indianapolis, Indiana to pick up the $10,000 and four proceeds checks. Thereafter, she was told to withdraw the remaining amount of money from her account. She was told Michel Yanni was going to travel to Indiana to pick up the money. She left the money in her unlocked car, and it was gone when she returned to her vehicle. The loss incurred from the deposit of the counterfeit check totaled $38,894.

73. On July 30, 2001, Justin Alles cashed a counterfeit check at a Firstar Bank at the direction of Michel Yanni. The check was in the amount of $6,200 and was drawn on the Discover Bank account of Ronnie C. Bailey of Bronx, New York. The bank recovered

$7.01; therefore, the amount of loss to the bank is $6,192.99.

74. Between September 18 and 27, 2000, Michel Yanni directed Shannon Weikert to deposit a counterfeit check into her checking account at HNB and then distribute the proceeds to members of the counterfeit check ring. According to records obtained from HNB in Columbus, Ohio, on September 18, 2000, Shannon Weikert deposited a counterfeit check, drawn on the Henshu E. Construction, Inc. of Madison, Wisconsin from First Business Bank of Madison, Wisconsin. The check was made payable to Shannon D. Weikert in the amount of $81,750.65. The balance in Weikert's account immediately prior to her deposit was $5.

75. Subsequent to the deposit, $77.50 in interest had been credited to her account. Weikert then proceeded to withdraw funds from her account. Between September 22 and 27, 2000, she withdrew proceeds of the deposit through four cash withdrawals totaling $39,012. Withdrawals were made on September 22 for $7,800; September 25 for $10,712; September 26 for $8,600; and September 27 for $11,900. A portion of the withdrawals that occurred on September 25 for $10,712 and September 27 for $11,900 were used to purchase cashier's checks from HNB. Specifically,

four cashier's checks were made payable to other members of this counterfeit check ring in the following denominations: Joshua Ingram in the amount of $4,900; Deepika Benjamin in the amount of $5,800; Justin Alles in the amount of $5,400; and Heather Watkins in the amount of $6,500. These four individuals were identified as associates of Michel Yanni in this counterfeit check ring.

76. The withdrawals made by Shannon Weikert caused a total loss of $38,929.50 to First Business Bank of Madison, Wisconsin. The total loss was reduced because Weikert's account had the legitimate funds of $5 and the interest of $77 .50, which were recovered by the bank.

77. Justin Alles cashed a cashier's check for $5,400 which was received from Shannon Weikert on September 27, 2000 at The Huntington National Bank, Easton branch, in Columbus, Ohio. He endorsed the check prior to cashing it.

78. Deepika Benjamin cashed a cashier's check in the amount of $5,800 at The Huntington National Bank which was also received from Shannon Weikert.

79. On September 26, 2000, Joshua Ingram cashed the HNB cashier's check, in the amount of $4,900, at a HNB branch in Columbus, Ohio. Ingram provided an endorsing signature, his Ohio driver's license, and a thumb print.

80. On September 27, 2000, Heather Watkins cashed the HNB cashier's check, in the amount of $6,500, at a HNB branch in Columbus, Ohio. She provided an endorsing signature, her Ohio driver's license number, and a thumb print on the cashier's check.

81. On August 19, 2003, Shannon Weikert was interviewed by the case agents. She admitted depositing the counterfeit check, in the amount of $81,750.65 into her account at HNB. She also admitted to making withdrawals in the form of cashier's checks that were made payable to Joshua Ingram, Deepika Benjamin, Justin Alles, and Heather Watkins.

82. Heather Watkins was arrested on August 19, 2003. She was later interviewed and admitted she received the check from Michel Yanni and cashed it for him. Yanni and an unknown white male met Watkins at the bank and stood with her at the teller window. Watkins

gave the money to Yanni and, in return, she was provided $50 for her assistance.

83. Deepika Benjamin was interviewed and admitted to cashing the cashier's check that was payable to her. She advised that she cashed the check for a college friend, but was unable to remember the friend's identity.

84. On January 17, 2001, Demarco Brown deposited a counterfeit check into his checking account at HNB in Columbus, Ohio. The check was payable to Brown in the amount of $31,865.75. The counterfeit check was dated January 10, 2001 and was drawn on the account of Poly- Tex, Inc., Castle Rock, Minnesota, at First State Bank of Castle Rock. Prior to the deposit, Brown's account balance was $10.

85. Subsequent to the First State Bank deposit of the counterfeit check, Brown withdrew some of the proceeds from his account. On January 18 and 24, he wrote checks against this account for $510 and $5,000 respectively. He used his Ohio driver's license to cash the $5,000 check.

86. On January 24, 200 I, the owner of Poly-Tex, Inc. reported to HNB that the signature on the counterfeit

check, made payable to Demarco Brown, in the amount of $31 ,865.75, was not his signature. He did not give any person authority to sign his name on the check.

87. According to the agents, there is evidence that the five counterfeit checks noted above, deposited into accounts at HNB, were supplied by Issa Conteh. The loss amount for these checks is $5,545.75 to The Huntington National Bank.

88. According to records obtained from Bank One, on May 31, 2000, Melanie Micah Bowles deposited a counterfeit check into her checking account. The check was drawn on the account of The Alzheimer's Association at Northern Trust Bank in Chicago, Illinois and made payable to Melanie Micah Bowles. The amount of the check was $34,874.45.

89. On August 15, 2000, the Director of Financial Operations for The Alzheimer's Association reported to the Northern Trust Company that the check payable to Melanie Micah Bowles was counterfeit.

90. Subsequent to the deposit of the counterfeit check, Ms. Bowles withdrew approximately $33,000 of the proceeds from her account. She wrote checks to an

unknown recipient for $5,000; Ikenna Myers in the amount of$5,000 and $3,500, and a $5,000 check to Deepika Benjamin. She also cashed counter checks for $8,500 and $6,000. Additionally, $1,874.45 was withdrawn through various ATM machines. The name of the payee was filled in by another individual. Bank One recovered $404.45 in funds from legitimate deposits into Ms. Bowles' account. Therefore, Bank One suffered a net loss of $34,470 as a result of the withdrawals made on Melanie Micah Bowles' account.

91. According to business records at Fifth Third Bank, James Kombe opened a savings account at Fifth Third Bank on December 20, 2000. On December 29, 2000, he deposited a counterfeit check into his savings account in the amount of $27,968.54. The check was made payable to James Kombe. It was dated December 27, 2000 and drawn on the account of Vascular Solutions, Inc., 2495 Xenium Lane North, Minneapolis, Minnesota, at Northwest Bank of Minnesota.

92. Subsequent to depositing the check, Kombe obtained the proceeds from the counterfeit check through savings account withdrawals of $5,000 and $7,500 on

January 4, 2001; $11,600 on January 5, 2001; and $3,800 on January 9, 2001.

93. On March 7, 2001, the treasurer of Vascular Solutions, Inc. reported to Wells Fargo Bank the discovery of the counterfeit check. Vascular Solutions, Inc. is a medical supply company in Minneapolis, Minnesota and operates in interstate commerce. As a result of this activity, Wells Fargo, Bank suffered a loss of $27,968.54.

94. On January 23, 2001, James Kombe deposited a second counterfeit check into his savings account. The check was payable to him in the amount of $18,895. The counterfeit check was dated January 22, 2001 and drawn on the account of Poly- Tex, Inc., P.O. Box 458, Castle Rock, Minnesota, at First State Bank of Castle Rock, Castle Rock, Minnesota.

95. On January 25, 2001, the owner of Poly-Tex, Inc. reported to Fifth Third Bank that the signature on the counterfeit check, that was payable to James Kombe, was not his signature. He also did not give any person authority to sign his name on the check. Poly-Tex, Inc. is a company that manufactures greenhouses in Castle Rock, Minnesota and operates in interstate commerce.

96. On January 26, 2001, the Poly-Tex, Inc. check was returned as counterfeit before any withdrawals were made against the deposit. No losses were incurred by Fifth Third Bank or First State Bank of Castle Rock.

97. James Kombe was interviewed and reported that had been approached by Michel Yanni to deposit the counterfeit checks. Kombe received the counterfeit checks in the mail. After he received the first check he was instructed by Yanni and another individual, Issa Conteh, to deposit the check into his personal checking account. After he deposited it at Fifth Third Bank, he then had to wait several days until he received another telephone call indicating the check had cleared.

98. After the check cleared, Kombe was instructed by Conteh to withdraw $7,000. Of that amount, Kombe was told to keep approximately $1,000. He was told to send the money to Conteh to an address in Columbus, Ohio. Kombe recalled there were two additional withdraws in the amounts of $5,000 each. Again, he kept around $1,000 each time and sent the rest to Conteh.

99. After the first check was deposited and withdrawn from his account, Kombe received the second

counterfeit check. Kombe deposited the check into his account and waited for the telephone call indicating it had cleared. Kombe was notified later that the check did not clear and that he would receive another check. Kombe told Yanni and Conteh he did not want to deposit another check.

100. On April 28, 2001, Shauna Philabaum deposited a counterfeit check into a joint savings account she held with her aunt at National City Bank. The counterfeit check was in the amount of $54,060.80. The check was drawn on the account of ARK Transportation LTD. with Key Bank. Subsequent to depositing the counterfeit check, Shauna Philabaum withdrew the proceeds through nine cash withdrawals between May 4 and 16, 2001. The withdrawals ranged in the amounts from $4,500 to $8,000. On May 9, 2001, Shauna Philabaum used some of the proceeds to purchase a National City Bank cashier's check, made payable to Justin Alles. She provided the check to Michel Yanni at his request. These transactions resulted in a loss to Key Bank in the amount of $49,425.57. The remainder of the funds were recovered from Ms. Philabaum's account.

101. Ms. Philabaum was later interviewed. She related her boyfriend, Mitch Cooper, later determined to be

Michel Yanni, provided her with the counterfeit check. He told her the check was from the proceeds from his stock funds. He wanted to cash the stock funds to provide financial support since she was pregnant with his child. Philabaum stated she never received any compensation for her assistance in this case.

102. On August 10, 2001, Kenya Nicole Carpenter deposited a counterfeit check into her checking account at Firstar Bank in Columbus, Ohio. The check was dated August 7, 2001, made payable to Kenya Carpenter, and was in the amount of $28,619.35. It was drawn on the business account of Slades, Inc. at Commerce Bank in Southfield, Michigan.

103. Subsequent to the deposit, Kenya Carpenter made withdrawals against the counterfeit check by writing and cashing checks at the direction of an individual named Mohammed. On August 13, 2001, she wrote a check, payable to herself, for $8,500. On August 14, 2001, she wrote a check, payable to cash, for $9,500. On August 16, 2001, she wrote a check, payable to herself, for $9,500. This resulted in a total loss of $27,500 to Firstar Bank (currently U.S. Bank).

104. On August 21, 2001, Ms. Carpenter was interviewed and admitted depositing the counterfeit check and withdrawing the proceeds. She did it on behalf of Mohammed (LNU). She provided information concerning the residence of Mohammed, which was found to be leased in the name of Issa Conteh. Mohammed (LNU) also drove a Dodge Neon, which was registered to Issa Conteh. Lastly, Carpenter received a telephone call from Mohammed (LNU) and noted that her caller identification displayed the name Issa B. Conteh.

105. On September 8, 2001, Lemoyne Jackson traveled from Columbus, Ohio to Wheeling, West Virginia for the purpose of depositing a counterfeit check into his Bank One account at the Wheeling branch of Bank One. The check deposited by Mr. Jackson was payable to him in the amount of $24,869.10 and was drawn on the State Bank of Trenton account of Fanners Co-Operative Grain and Supply, Trenton, Nebraska. According to the office manager of this company, she reported the check payable to Lemoyne Jackson was counterfeit.

106. Mr. Jackson returned to West Virginia on September 14, 2001 to withdraw the proceeds of the counterfeit check. He withdrew the funds through an automated

teller machine withdrawal and a counter check. He then transported the cash back to Columbus, Ohio where he distributed all but $500 of the proceeds to Keith Walker. Based on his activities, Bank One suffered a loss of $24,816.10.

107. The agents learned Issa Conteh offered Jackson $500 to negotiate the check. Jackson met with Conteh and Keith Walker at a park in Columbus, Ohio where Conteh handed the counterfeit check to Walker, who then handed it to Jackson.

108. The case agents learned Issa Conteh told a cooperating witness that Michel YalUli had given him money from counterfeit checks to him in Oregon while he (Conteh) was living there.

109. On February 6, 2002, Michel YalUli told a cooperating witness that Issa Conteh was still dealing in counterfeit checks and that he (YalUli) would ask Conteh if Conteh would provide the cooperating witness with a counterfeit check.

110. On February 7, 2002, Issa Conteh told a reliable and credible source that he had not dealt in counterfeit checks in a while. Conteh provided the name and pager number of Hakim, who Conteh stated could

provide the cooperating witness with a counterfeit check. Conteh proceeded to tell the source that Hakim got him started in the counterfeit check business and has also provided counterfeit checks to Michel Yanni. Conteh suggested that the source could use him and Yanni as references when he contacted Hakim.

111. In May 2000, Lamin Touray deposited a counterfeit check in the amount of$24,607.70 into Chase Manhattan Bank. The check was drawn on the account of The Alzheimer's Association of Chicago, Illinois. According to the case agent, this check was deposited into a bank in Spain. However, this bank has not responded to the request from the FBI regarding the loss incurred by this counterfeit check deposit. Lamin Touray has not been arrested to date. It is believed he left the country.

112. On August 19, 2003, a co-conspirator was interviewed by the case agents. This individual indicated he/she was introduced to the cashing of counterfeit checks by Issa Conteh and his brother, Hairnadou Conteh. This individual was told by the Contehs that they would deposit counterfeit checks into an account that was provided to them, and the only thing this individual had to do was to withdraw the money and provide the cash back to them.

113. The co-conspirator stated the Contehs directed Yanni to find individuals who had good bank accounts and to have those individuals deposit the counterfeit checks into their accounts. Yanni recruited at least ten individuals to negotiate checks for YalU1i and, ultimately, for the Contehs. Yanni would receive the counterfeit checks from the Contehs on different occasions.

114. The co-conspirator stated Issa Conteh moved to Columbus, Ohio. Haimadou Conteh would work through Issa Conteh to provide checks. Issa Conteh or Michel Yanni would provide Haimadou Conteh with the name of the person whose bank account was to be used, the name of the address of the bank, and sometimes the telephone number of the bank. Haimadou Conteh would then send a counterfeit check to that person to be deposited. Issa Conteh would provide the information to his brother at times when Yanni did not have a cellular telephone to use.

115. Upon receiving information about the account holder, a check was either sent directly to that person or directly deposited into the bank account of that individual. The person who was recruited to cash or deposit the check would hold all of the money from the check until all of the withdrawals were made.

Yanni would then get the money and provide it to Issa Conteh, or Conteh would get the money himself. It was believed Conteh would then send the money to his brother in New York, although this was uncertain. The person who deposited or cashed the check would receive a small portion of the money from the check.

116. The co-conspirator was aware that Keith Walker was the only other person in Columbus that was arranging for counterfeit checks to be negotiated for Issa Conteh just like Michel Yanni did for Conteh. Yanni told Walker about the idea and had him contact Issa Conteh for further information. Walker then began working with Conteh directly from then on.

117. The co-conspirator indicated that a flight was taken to Portland, Oregon whereby Nath Chhuom carried money for Issa Conteh. Yanni asked her if she would do it, and she agreed. Yanni traveled with her. Haimadou Conteh paid for the airline tickets. Yanni and Chhuom went to Issa Conteh's home to deliver the money.

118. Lastly, the co-conspirator indicated that introductions were made between some of the individuals Yanni had recruited and Issa Conteh. Conteh would then discuss with these individuals regarding when to

deposit or cash the checks, how much to withdrawal, etc.

119. According to Mahamadou Tunkara, who testified during the defendants' trial, Issa Conteh was identified as one of the individuals who ran the counterfeit check ring along with his brother, Haimadou Conteh. It was believed the Conteh's had a 50/50 partnership in the check ring. They were described as the leaders in the organization. Tunkara became involved when he saw Issa Conteh driving a new black Acura Legend. Conteh told him he was working with someone going to banks and bribing tellers. Further, he was also finding people on the streets to negotiate counterfeit checks. They would obtain fake identification, social security numbers, bank accounts, and apartments for the people they recruited. They would then get the people to deposit the counterfeit checks on their behalf and then withdraw the money. Generally, the people could negotiate three checks for about $9,000 each before the bank caught on to what was occurring. Issa and Haimadou Conteh kept two-thirds of the withdrawn funds and gave the person, who opened the account, one-third of the funds. After Tunkara agreed to assist the Contehs, they moved him to Colorado from New York. The Contehs went with Tunkara to establish the

offense. They opened accounts using false names. They obtained social security numbers from Seattle. The Contehs had Tunkara open three bank accounts using a false identity. Approximately one month after the accounts were opened, Haimadou Conteh accompanied Tunkara to a bank to deposit a counterfeit check followed by withdrawals. Issa Conteh came to Colorado to pick up the money. He then took the money to New York.

120. Tunkara learned Issa Conteh had moved from Oregon to Columbus, Ohio and bought a house. He clearly made a lot of money as he had a lot of girlfriends and bought them cars. He also heard that the Contehs continued to recruit people to conduct bank fraud activities.

121. The total value of laundered funds in this case was $527,864.91, according to case agents.

Victim Impact

122. The victims in this case include Fifth Third Bank, which suffered a total loss of $20,125.35; Northern Trust Company, which suffered a loss of $27,354.78; Bank One, which suffered a total loss of $59,286.10; Firstar Bank (currently U.S. Bank), which suffered a

collective loss of $72,586.99; First Business Bank, which suffered a loss of $38,929.50; Wells Fargo Bank, which suffered a loss of $27,968.54; The Huntington National Bank, which suffered a total loss of $5,545.75; Key Bank, which suffered a total loss of $49,425.57, and M& I Bank which suffered a loss of $18,768.97. (Total- $319,991.55)

Adjustment for Obstruction of Justice

123. During the jury trial, an individual named Mahamadou Tunkara testified against Issa Conteh. His name was disclosed in Court on February 6, 2004 that he was going to testify on Monday, February 9, 2004. Over the weekend, Mr. Tunkara received vale threats. Specifically, through a chain, friends and/or family of Issa Conteh in New York contacted Tunkara's family in West Africa. The family contacted the defendant's wife who then contacted her husband. Tunkara was enroute to Columbus, Ohio at the time he spoke to his wife. The threat was, "We'll take care of you." Mr. Tunkara believed this statement meant that he would be killed if he testified. The reason for this was because he pled guilty to a similar type case in Colorado. His codefendant, Boye Bah, was deported to Africa following his arrest. Bah was killed one day when he was leaving work. Tunkara

believes Bah was killed because he cooperated with the FBI. Therefore, the threat made to the witness may be grounds for obstruction of justice.

Adjustment for Acceptance of Responsibility

124. Upon the advice of the defendant's attorney, Mr. Conteh declined to make a statement.

Offense Level Computation

125. The 2000 edition of the United States Sentencing Commission Guidelines Manual has been used in this case as this edition is more favorable to the defendant than the current edition. Additionally, the use of the 2000 edition does not violate the ex post facto clause of the United States Constitution, pursuant to §§1B1.11(a) and (b)(1).

126. The defendant has been convicted of Count 1 through 19 and 21 and 22. Consequently, the multiple count grouping rules are to be applied, pursuant to Chapter 3, Part D. The guideline for Count 1, an 18 U.S.C. §1956 offense, is located in §2S1.1 of the Guidelines Manual. The guideline for Counts 2 through 10, an 18 U.S.C. §513(a) offense, Counts II through 19, an 18 U.S.C. §1344 offense, and Counts 21 and 22, an 18

U.S.C. §2314 offense, is located in §2F1.1 of the Guidelines Manual. Pursuant to §3D1.2(d), Counts 2 through 19 and 21 and 22 are grouped as these offense guidelines are determined largely on the basis of the total amount of harm or loss. Pursuant to §3D 1.2(b), Count 1 is grouped with Counts 2 through 19 and 21 and 22 to form a single count group. §3D 1.3(a) states, "In the case of counts grouped together pursuant to §3D 1.2(b), the offense level applicable to a group is the offense level, determined in accordance with Chapter 2 and Parts A, B and C of Chapter 3, for the most serious of the counts comprising the group, i.e., the highest offense level of the counts in the group." In this case, the highest offense level is produced in §2S 1.1, which applies to Count 1.

127. **Base Offense Level**: The guideline for an 18 D.S.C. § 1956 offense is located in §2S 1.1 of the Guidelines Manual. According to §2S1.1 (a)(2), the base offense level is 20.

128. **Specific Offense Characteristic**: Pursuant to §2S 1.1 (b)(2), if the value of the funds exceeded $100,000, increase the offense level as it pertains to the table in this section. The value of the laundered funds in this case has been determined to be $527,864.91. Pursuant to §2S1.1(b)(2)(D), if the value of the funds is more

than $350,00 but not more than $600,000, the offense level is increased by 3 levels.

129. **Victim-related adjustments**: None.

130. **Adjustment for Role in the Offense**: Pursuant to §3B 1.1 (a), if the defendant was an organizer or leader of a criminal activity that involved five or more participants or was otherwise extensive, increase by 4 levels.

131. According to the Commentary section, Application Note #3, in assessing whether an organization is "otherwise extensive," all persons involved during the course of the entire offense are to be considered. Thus, a fraud that involved only three participants but used the unknowing services of many outsiders could be considered extensive. Further, according to Application Note #4, in distinguishing a leadership and organizational role from one of mere management or supervision, titles such as "kingpin" or "boss" are not controlling. Factors the Court should consider include the exercise of decision making authority, the nature of participation in the commission of the offense, the recruitment of accomplices, the claimed right to a larger share of the fruits of the crime, the degree of participation in planning or organizing the

offense, the nature and scope of the illegal activity, and the degree of control and authority exercised over others.

132. In this case, it is clear Issa Conteh was the leader of this large counterfeit check cashing ring that involved five or more participants. He directed Michel E. Yanni and Keith Edward Walker, II to recruit individuals to deposit counterfeit business checks into their existing checking or savings accounts and then to withdraw the proceeds. Yanni and Walker would supply the names and addresses of the individuals they had recruited, as well as the banks where the individuals' savings or checking account were maintained to Issa B. Conteh. Conteh would the supply counterfeit business checks to Yanni and Walker who would then give the checks to the runners. Conteh directed Yanni and Walker to inform the individuals, who deposited the counterfeit checks and cashed the checks, the amount of money to be withdrawn from the account and to whom the proceeds were to be distributed.

133. Therefore, based on the above, it is clear the defendant was the organizer and leader of the instant conspiracy, and 4 levels are added to the offense level computation.

134. **Adjustment for Obstruction of Justice**: Pursuant to §3C 1.1, if the defendant willfully obstructed or impeded, or attempted to obstruct or impede the administration of justice during the course of the investigation, prosecution, or sentencing of the instant offense of conviction, increase the offense level by 2 levels.

135. According to the Commentary section, Application Note #4, a non-exhaustive list of examples of the types of conduct to which this adjustment applies includes (a) threatening, intimidating, or otherwise unlawfully influencing a codefendant, witness or juror, directly or indirectly, or attempting to do so. Indirectly, just prior to Mamadou Tunkara testifying against Issa Conteh, he received a vale threat from Conteh's family and/or friends in New York. The threat was, "We'll take care of you." Based on this indirect statement to the witness, 2 levels are added to the offense level computation for obstructive conduct.

136. **Adjusted Offense Level** (Subtotal):

137. **Adjustment for Acceptance of Responsibility**: The defendant was found guilty by a jury trial. He declined to make a statement upon the advice of his attorney.

Therefore, he has not accepted responsibility for his criminal conduct in this case.

138. **Total Offense Level**:

PART B. THE DEFENDANT'S CRIMINAL HISTORY

Juvenile Adjudication(s)

139. None known.

Adult Criminal Conviction(s)

140. None

Criminal History Computation

141. The defendant does not have any criminal history points and, according to the Sentencing Table (Chapter 5, Part A), 0 or 1 criminal history point establishes a criminal history category of I.

142. According to the Ohio Bureau of Motor Vehicles, the defendant has a valid operator's license that is due to expire on June 16, 2004. He has 2 points on his driving record after having been cited for Speeding in 2001.

PART C. OFFENDER CHARACTERISTICS

Personal and Family Data

143. Issa Bakusa Conteh was born on June 17, 1972 in Sierra Leone to the marital union of Bakusa Conteh and Istou Camara. The defendant's father died in 1992 as a result of rebel fighting that occurred in their city of Koido. He was a Muslim religious leader. The defendant's mother, age 57, resides in Gambia. The defendant has two brothers and two sisters as follows: Mohammed Conteh, age 41, who resides in Gambia and is a religious leader; Sikou Conteh, age 21, who resides in Germany; Haja Conteh, age 29, who resides in Paris; and Aminata Conteh, age 24, who resides in London.

144. According to Mr. Conteh, his residency includes being born and raised in Sierra Leone. During the rebel fighting in 1992, his family scattered to other parts of the country. Conteh fled to Gambia which is where his family reunited approximately 2 months later. Shortly thereafter, he then immigrated to the United States to build his future in terms of education and employment. He lived in Bronx, New York until 1999 followed by Portland, Oregon until August 2000. He then moved to Columbus, Ohio where he

and his family have since lived. It is noted, personnel with the United States Department of Homeland Security, Immigration and Customs Enforcement (BICE) confirmed the defendant is a lawful, permanent resident. His residency card was not due to expire until November 24, 2009. The offense behavior and conviction for the instant offense may be grounds for deportation.

145. According to the defendant, he speaks Maraka, Mondinga, and English.

146. Mr. Conteh stated he was raised in a close, loving family. His father worked for the Government while his mother stayed home to raise the family. He was raised in the Muslim family faith which he continues to practice.

147. Prior to the defendant immigrating to the United States, he courted a female named Fatmata Jabbie. Approximately one year after Conteh moved to the United States, his family went to her family and told them that he liked her and wanted to marry her. A marriage took place in 1993 whereby Conteh was in the United States and she was still in Africa. Around 1995, she came to the United States to be with her husband. The marital union has produced 2 children

as follows: Muhammed Conteh, age 2, and Ali Conteh, age 4 months. The defendant's wife is employed as a nursing assistant at a senior citizen home in Columbus.

148. The defendant also has two other children that he and his wife are raising. They are Bakusa Conteh, age 7, and Musa Conteh, age 5. According to the defendant, the mother of these children passed away. When his wife came to the United States, his children came with her.

149. On February 24, 2004, this officer telephonically spoke to the defendant's wife. She verified their meeting in Sierra Leone when they were teenagers. There was no intimacy between them until they were married. Mrs. Conteh stated she came to the United States around 1996 to be with her husband. He was working two jobs in New York at the time. When she obtained employment as a nursing assistant, he quit one of the jobs.

150. Mrs. Conteh stated her husband did not want to raise his children in New York, so they decided to move. He had a friend who lived in Portland, Oregon, so they moved there for a period of time. Mrs. Conteh indicated she did not like living in Oregon because

she did not know anyone. They decided to move to Columbus, Ohio because she and her husband knew people who lived in Ohio and heard it was a nice area to raise children.

151. The defendant's wife explained that as a side job, she and her husband would sell gold that they had been made in Africa. Gold is cheaper in Africa, and they were able to make money in the United States. Around 2001, they also began buying perfume and clothes from Africa. To begin these side jobs, they obtained a loan for $6,000 and then a second loan for $15,000. They paid off the $6,000 loan, yet are still paying off the $15,000. Mrs. Conteh went on to say she and her husband purchased the Cadillac Escalade in 2003. They believed it would have been an investment as they planned on selling the vehicle in Africa. With the money, they were going to payoff the loan and purchase diamonds and gold to sell in the United States. Before this occurred, he was charged with the instant offense.

152. Mrs. Conteh stated her husband is a hard worker. He is thoughtful and kind. He worries more about his family than his own legal troubles. Mrs. Conteh stated she is struggling, financially, while her husband is in jail. However, her nephew has moved in with her and

assists her by paying $350 per month. Along with her nursing assistant job, she also braids hair and charges about $100 per head. She indicated that she will remain completely supportive of her husband.

Physical Condition

153. Issa Conteh is physically identified as male, standing approximately 5' 10" tall, weighing about 117 pounds with brown eyes and black hair. He does not have any tattoos. He has one notable scar on his right leg. He does not wear glasses or contacts.

154. Regarding the defendant's physical condition, he noted he has suffered from a stomach illness for approximately one year. He was prescribed Zantac for a period of time. Although it has not been properly diagnosed, he believes it could be an ulcer. He is not taking any medication at present. He does not eat pork for religious purposes.

Mental and Emotional Health

155. The defendant has no history of mental or emotional problems, and no history of treatment for such problems. He did note that, during the war, he was sad that his father was killed and he had to scatter from

his family; however, he has tried to grow from it. Regarding the instant offense, Mr. Conteh indicated he is handling it okay. He does not believe he is suffering from any clinical problems.

Substance Abuse

156. The defendant has no history of alcohol or drug use and no history of treatment for substance abuse.

Educational and Vocational Skills

157. According to Mr. Conteh, he completed six years of school when he lived in Sierra Leone. After six years of schooling, the defendant's father sent him to live with his grandmother in the country to help her with chores. When he returned to his family in Koido, the war began, and he had to leave the city to avoid being killed.

158. Mr. Conteh indicated he attended a course at the North Adult Education Center in Columbus, Ohio. It was an English as a second language course. According to the administrative office, they only keep records dating back one year. Therefore, this information could not be verified.

Employment Record

159. From August 21, 2002 to February 2004, Mr. Conteh worked at Cracker Barrel Old Country Store in Pickerington, Ohio. Mr. Conteh was a dishwasher and earned $7.80 per hour.

160. From February 3, 2003 to June 11, 2003, the defendant worked at Pets Mart as a core associate. According to the wage garnishment specialist, Mr. Conteh was paid $.950 per hour.

161. Mr. Conteh also reported working at Meijer, McDonalds, and Success Temporary Service in Columbus; Oregon Protective Service Company and Portland Auto Auction in Portland, Oregon; and several fast food restaurants in New York. Information was received from McDonalds, Portland Auto Auction, and Success Temporary Service indicating there is no record the defendant worked at their companies.

162. As a goal for the future, Mr. Conteh is interested in working in the culinary field.

Financial Condition: Ability to Pay

163. The following information was obtained by interviewing the defendant and his wife and reviewing a portion of their financial records. Items marked with an asterisk represent the defendant's share of assets jointly held with his wife.

ASSETS

Fifth Third Bank- checking account*	$350

UNENCUMBERED ASSETS

1992 Subaru Legacy	$2,400
Personal belongings	$4,300

EQUITY IN OTHER ASSETS

2002 Cadillac Escalade*	$0
Residence*	$0
TOTAL ASSETS	**$7,050**

LIABILITIES

Attorney	$3,000
Rhodes	$999
American Express	$1,502
Providian	5,534
Discover	$6,000
TOTAL LIABILITIES	**$17,035**
NET WORTH	**($9,985)**

MONTHLY INCOME

Defendant's salary	$1,166
Spouse's Salary	unknown
Nephew	$350
TOTAL INCOME	**$1,516**

NECESSARY MONTHLY EXPENDITURES

Mortgage	$821
Utilities	
- electric	$57
-gas	$150
- water/sewer	$33
- telephone	$40
Groceries/supplies	$200

Auto Insurance	$120
Car payment	$621
Daycare	$178
TOTAL NECESSARY EXPENSES	**$2,220**
CASH FLOW	**($704)**

164. The above financial statement is incomplete. No records regarding the defendant's home and vehicle, his wife's income, bank statements, and utility records were obtained. It is known that Mr. Conteh will be required to make restitution in this case of over $300,000 jointly and severally with Michel Yanni, Keith Walker and respective codefendants and coconspirators. With that in mind, it appears he does not have the ability to pay a fine in this case.

PART D. SENTENCING OPTIONS

Custody

165. **Statutory Provisions: Counts 1, 11, 12, 13, 14, 15, 16, 17, 18 and 19** - The maximum term of imprisonment is 30 years, pursuant to 18 D.S.C. § 1344 and § 1956(h), a Class B felony.

166. **Counts 2, 3, 4, 5, 6, 7, 8, 9, and 10** - The maximum term of imprisonment is 10 years, pursuant to 18 U.S.C. §513(a), a Class C felony.

167. **Counts 21 and 22** - The maximum term of imprisonment is 10 years, pursuant to 18 D.S.C. §2314, a Class C felony.

168. **Guideline Provisions**: The guideline imprisonment range is 87 - 108 months based on a total offense level of 29 and criminal history category of I (Chapter 5, Part A). According to §5C 1.1 (t), since the applicable guideline range is within Zone D of the Sentencing Table, the minimum term shall be satisfied by a term of imprisonment.

Impact of Plea Agreement

169. Mr. Conteh was convicted by a jury trial. Therefore, this section is not applicable.

Supervised Release

170. **Statutory Provisions: Counts 1, 11, 12, 13, 14, 15, 16, 17, 18 and 19** - A maximum term of 5 years supervised release is authorized, pursuant to 18 D.S.C. §3583(b)(1).

171. **Counts 2, 3, 4, 5, 6, 7, 8, 9,10, 21 and 22** - A maximum term of3 years supervised release is authorized, pursuant to 18 D.S.C. §3583(b)(2).

172. The Court shall order as conditions of supervised release that the defendant not commit any federal, state or local crimes and not possess illegal controlled substances. The Court shall also order the defendant to refrain from any unlawful use of a controlled substance and submit to one drug test within 15 days of release on supervised release and at least two periodic drug tests thereafter. This condition may be ameliorated or suspended if the defendant's presentence report or other reliable sentencing information indicates a low risk of future substance abuse by the defendant, pursuant to 18 D.S.C. §3583 (d).

173. Guideline Provisions: The Court shall order a term of supervised release when a term of more than one year imprisonment is imposed. Otherwise, a term of supervised release is optional. U.S.S.G. §§5D1.l(a) and (b). The authorized term of supervised release is at least 3 but not more than 5 years as per §5D1.2(a)(1) with respect to Counts 1, 11, 12, 13, 14, 15, 16, 17, 18 and 19. The authorized term of

supervised release is 2 to 3 years as per §5D1.2(a)(2) with respect to Counts 2,3,4,5,6,7,8,9,10,21 and 22.

Probation

174. **Statutory Provisions**: The defendant is not eligible for probation since Counts 1, 11, 12, 13, 14, 15, 16, 17, 18 and 19 constitute Class B felonies, pursuant to 18 U.S.C. §3561 (a)(1). Additionally, with respect to the remaining counts, probation is prohibited since he will be sentenced at the same time to a term of imprisonment for a different offense that is not a petty offense.

Fines

175. **Statutory Provisions: Counts 1, 11, 12, 13, 14, 15, 16, 17, 18 and 19** - The maximum fine that may be imposed is $1,000,000, pursuant to 18 U.S.C. §1344 and §1956(h).

176. **Counts 2, 3, 4, 5, 6, 7, 8, 9, 10, 21 and 22** - The maximum fine that may be imposed is $250,000, pursuant to 18 D.S.C. §3571(b)(3).

177. A special assessment of$2,100 ($100 on each count) is mandatory, pursuant to 18 D.S.C. §3013.

178. Guideline Provisions: The fine range for this offense is $15,000 to $10,000,000, as per §§5E1.2(c)(1) and (c)(4)(A), respectively.

179. The Court in imposing a fine shall consider among other criteria, the expected cost of any imprisonment, probation or term of supervised release, according to §5E1.2(d). The most recent advisory from the Administrative Office of the United States Courts, dated June 11, 2003, suggests monthly costs of $1,876.61 for imprisonment, $1,475.67 for a community correction center, and $283.23 for supervision. The daily cost of home confinement with electronic monitoring is $3.47.

Restitution

180. Statutory Provisions: Pursuant to 18 U.S.C. §3663A, restitution of $319,991.55 shall be ordered. Payments should be forwarded to:

PART E. FACTORS THAT MAY WARRANT DEPARTURE

183. The probation officer has identified no information regarding the offense or offender that may warrant a departure.

Respectfully submitted,
/s/ Beth Harris
Beth A. Harris
U. S. Probation Officer

Reviewed and approved:

/s/ Phelps L. Jones
Phelps L. Jones
Supervising U.S. Probation Officer

/kc

ADDENDUM TO THE PRESENTENCE REPORT

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO
UNITED STATES V. ISSA B. CONTEH,
DKT. # CR-2-03-140(I)

The probation officer certifies the herewith transmitted presentence report is the true and accurate final presentence report. The presentence report and addendum have been disclosed to the defendant, the defendant's attorney and counsel for the government. The presentence report was disclosed on March 17, 2004. On April 5, 2004, defense counsel submitted an objection letter outlining a number of objections to include factual information, information received from coconspirators, obstruction of justice and role in the offense. Counsel for the Government did not have any objections to the presentence investigation report. All of the objections remain unresolved and are outlined below for your Honor's review.

Objection No.1

The defendant and defense counsel object to information contained in paragraphs 59, 87, 114, 115, 116, 117, and 121-127 as noted in his objection letter dated April 5, 2004.

Response

The probation officer received the factual information from the case agents and Assistant U.S. Attorneys assigned to the case. Much of the information was presented in trial. The information was pertinent to determine the guideline calculations. Therefore, it is necessary the information remain in the report.

Counsel for the Government concurs with the probation officer in this matter adding that the information contained in the report is accurate.

Objection No.2

The defendant and defense counsel object to paragraphs 68, 97-99, and 111 of the presentence investigation report regarding statements made by Nath Chhuom, James Kombe, and Kenya Carpenter.

Response

The information was obtained from the de briefings of the above mentioned individuals. Counsel for the government indicated the statements made by these individuals were credible. Therefore, the information was inserted into the presentence investigation report and pertinent to the

application of the guidelines. Therefore, it is necessary the information from these three individuals remain in the report. Counsel for the government concurs with the probation officer in this matter.

According to the Commentary section at §3B 1.1, Application Note #3, in assessing whether an organization is "otherwise extensive," all persons involved during the course of the entire offense are to be considered. Thus, a fraud that involved only three participants but used the unknowing services of many outsiders could be considered extensive. Further, according to Application Note #4, in distinguishing a leadership and organizational role from one of mere management or supervision, titles such as "kingpin" or "boss" are not controlling. Factors the Court should consider include the exercise of decision making authority, the nature of participation in the commission of the offense, the recruitment of accomplices, the claimed right to a larger share of the fruits of the crime, the degree of participation in planning or organizing the offense, the nature and scope of the illegal activity, and the degree of control and authority exercised over others. Therefore, based on the information received, a four level enhancement was applied to the guideline calculations.

Counsel for the government concurs with the probation officer in this matter.

Respectfully submitted,
/s/ Beth Harris
Beth A. Harris
U.S. Probation Officer

Reviewed and approved by:
/s/ Phelps L. Jones
Phelps L. Jones
Supervising U.S. Probation Officer

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In re: U.S.A. v. Issa B. Conteh
Case No. CR-2-03-140(001)

Dear Ms. Harris:

Here are the Objections of Defendant, Issa Conteh, to the Presentences Report.

¶59

(a): "Evidence has revealed that the leader of the ring was Issa Conteh ....

Objection: No evidence at trial was introduced to suggest that Issa Conteh actually acted as the "leader of the ring" that is the

subject of this case. See argument regarding Mr. Conteh's alleged leadership infra.

(b): "As part of the plan, Conteh provided a counterfeit checks to 'middlemen', to include Mike Michel Yanni, and Keith Walker, II."

Objection: No evidence was introduced at trial to suggest that Mr. Conteh ever provided the checks to Mr. Yanni or Mr. Walker. In contrast, evidence presented at trial, and evidence sought to be presented at trial by defense counsel, clearly indicated that Mr. Yanni, and possibly Mr. Walker, were receiving checks directly from New York.

¶68: "It appeared he [Issa Conteh] was in charge of the entire organization and was sending money back to Africa."

Objection: Nath Chhuom never testified as to such a "appearance" at trial. Likewise, this statement relies upon speculation and inferences drawn on many other inferences.

¶87: According to agents, there is evidence that the five counterfeit checks noted above, deposited into accounts at HNB, were supplied by Issa Conteh."

Objection: No evidence was ever presented at trial suggesting that Issa Conteh ever supplied the checks in question to anybody named DeMarco Brown, or anyone else for that matter. This statement in the presentence investigation report is speculative, based upon inferences drawn off of other inferences, and hearsay statements. Issa Conteh never "supplied" counterfeit checks to anyone.

¶97: "After he received the first check, he was instructed by Yanni and another individual, Issa Conteh, to deposit the check into his personal savings account."

Objections: Issa Conteh never gave any such instructions to James Kombe. James Kombe's testimony is unworthy of

belief. In his first statement to authorities, he never implicated Issa Conteh in the conspiracy, however, months after signing his plea agreement, and presumably upon learning that Issa Conteh was the primary target of the Federal Government, James Kombe changed his story to conveniently include Issa Conteh in his testimony.

¶98: Kombe implicates Issa Conteh in other criminal activity such as withdrawals.

Objection: See objection set forth to paragraph 97.

¶99: "Kombe told Yanni and Conteh that he did not want to deposit another check."

Objection: See objection set forth to paragraph 97.

¶11: The presentence investigation report implicates Issa Conteh as having provided shelter, a vehicle, and a phone for use by a person named Mohammed who allegedly provided checks to Ms. Kenya Carpenter.

Objection: No such evidence was ever presented at trial. Moreover, the fact that a person named Mohammed, who allegedly was visiting Issa Conteh in Columbus, Ohio, may have provided some checks to Kenya Carpenter does more to point to Issa Conteh's innocence than to his involvement in the scheme. Again, Mr. Conteh's defense at trial was the fact that others, from New York, were supplying checks directly to Michel Yanni for distribution through the "runners". The existence of this person named Mohammed, and this person's alleged direct supply of checks to Kenya Carpenter corroborates Mr. Conteh's defense more than it inculpates Mr. Conteh.

¶114: The presentence investigation report implicates Issa Conteh in obtaining Lemoyne Jackson's assistance in depositing counterfeit checks.

Objection: The evidence at trial clearly indicated that Lemoyne Jackson, upon his initial statement, failed to inculpate Issa

Conteh. Only in a subsequent statement given long afterward, did Lemoyne Jackson implicate Issa Conteh in this matter. It is interesting to note that Lemoyne Jackson's suggestion of Issa Conteh's involvement only arose after Lemoyne Jackson became aware of the fact that the Federal Goverment was targeting Issa Conteh in this investigation. Therefore, Lemoyne Jackson's testimony implicating Issa Conteh is unworthy of belief.

¶15: "The case agents learned Issa Conteh told a cooperating witness that Michel Yanni had given him money from counterfeit checks to him in Oregon while he (Conteh) was living there."

Objection: No such statement was ever provided to defense counsel in discovery. Likewise, no such statement was ever introduced in evidence at trial. This factual assertion in the presentence investigation report relies upon speculation, and the creating of an inference upon an inference.

¶116: "On February 6, 2002, Michel Yanni told a cooperating witness that Issa Conteh was still dealing in counterfeit checks and that he (Yanni) would ask Conteh if Conteh would provide the cooperating witness with a counterfeit check."

Objection: Any implication that Issa Conteh was actually supplying checks to Michel Yanni, based upon Michel Yanni's alleged statement, is built upon speculation, hearsay, and the drawing of an inference upon an inference. Furthermore, no evidence was ever introduced, or supplied through discovery suggesting that Michel Yanni ever had such a conversation with Issa Conteh.

¶117

(a): "On February 7, 2002, Issa Conteh told a reliable and credible source that he had not dealt in counterfeit checks for awhile."

Objection: No such statement ever took place. The transcript of the tape recorded conversation between Issa Conteh and Ikenna Myers does not support this factual assertion. In fact, Issa Conteh, as recorded, states, "You know I never done deal, I never did, but I [know] these guys, these guys [I met them a] long time ago now."

(b): "Conteh provided the name and pager number of Hakim, who Conteh stated could provide the cooperating witness with a counterfeit check."

Objection: This statement does not implicate Issa Conteh in any way as a participant in the conspiracy. In fact, even according to the court's jury instructions, the mere introduction of somebody to another person does not constitute an act in furtherance of the conspiracy. This statement supports Mr. Conteh's theory at innocence in this case.

(c): "Conteh proceeded to tell the source that Hakim got him started in the counterfeit check business and has also

provided counterfeit checks to Michel Yanni."

Objection: The transcript and tape of the recorded conversation between Ikenna Myers and Issa Conteh does not support the factual assertions in this statement. Undersigned counsel recommends that the probation department review for itself the transcript/tape of the recorded conversation between Mr. Myers and Mr. Conteh.

¶121: This paragraph of the presentence investigation report implicates Issa Conteh, and his supposed brother Haimadou Conteh.

Objection: Issa Conteh denies any involvement or affirmative action in furtherance of any conspiracy to deposit counterfeit checks. Although it is unclear, undersigned counsel presumes this paragraph of the presentence investigation report relates to proffer meetings held with co-defendant, Michel Yanni. These statements by

Michel Yanni should not be given any weight, as these statements are obviously self serving declarations serving no other purpose other than to minimize Michel Yanni's role by focusing blame on another person, in this case the innocent Issa Conteh. Furthermore, no such evidence was ever introduced at trial, or supplied to counsel in discovery.

¶122: See Objection stated to paragraph 121.

¶123: See Objection to paragraph 121.

¶124: See Objection to paragraph 121. Furthermore, some of the factual statements in paragraph 124 are inconsistent with some of the other factual assertions as to the manner and nature of the activities involved in this conspiracy. In paragraph 124, the "co-conspirator" providing the information clearly contradicts other information as testified to at trial. Paragraph 124, indicates that the "co-conspirator" in question is

indicating that the checks were either sent directly to the person depositing the check or directly deposited into the bank account of that individual. This plainly contradicts the testimony of other witnesses indicating that they received the checks directly from Michel Yanni and/or Keith Walker. Moreover, there is no evidence to suggest any money, or any checks were ever "directly deposited" into the bank account of the individual.

¶125: See objection to paragraph 121.

¶126: See objection to paragraph 121. Furthermore, there is no evidence to suggest that any member of Issa Conteh's family ever paid for airline tickets.

¶127: See objections to paragraph 121.

¶128:

(a): "According to Mahamadou Tunkara, who testified during the Defendants' trial, Issa Conteh was identified as one

of the individuals who ran the counterfeit check ring along with his brother, Haimadou Conteh."

Objections: No such testimony was ever propounded by Mr. Tunkara. Mr. Tunkara had no personal knowledge, and hence, offered no testimony, regarding any of the activities in Columbus, Ohio, or arising out of the check cashing ring operating out of Columbus, Ohio.

(b): "It was believed that the Contehs had a 50/50 partnership in the check ring. They were described as the leaders in the organization."

Objection: See objection in "(a)" above. Again, Mr. Tunkara gave no such testimony and has provided no such direct information.

¶128

(c):

Objection: The remaining statements in paragraph 128 set forth various alleged facts as testified to by Mr. Tunkara. Again, these allegations are separate and apart from any alleged conspiracy operating out of Columbus, Ohio giving rise to this case. Furthermore, no documentary evidence was ever supplied to suggest that any such conspiracy ever actually existed. Mr. Tunkara's credibility must be called into question, but notwithstanding that problem, the fact remains that Mr. Tunkara did not testify, nor did he give any information based upon personal knowledge relating to any of the activities that were the subject of this indictment.

¶129: See Objections to paragraph 128.

¶132:

(a): "Over the weekend, Mr. Tunkara received vale threats."

Objection: No such evidence exists to suggest that any such "threats" were made by Mr. Conteh, nor does it support the

allegation that any "threats" were made at Mr. Conteh's request. No direct contact was ever made with Mr. Tunkara, by Issa Conteh or anyone else. The West African community is a tight knit community, and the people throughout that community know each other through friends, and family. Nevertheless, absolutely no evidence exists to suggest that any "threat" was ever made against Mr. Tunkara by Mr. Conteh. Even if the court believes such a conversation was had between a member of defendant's family and Mr. Tunkara's wife, Mr. Conteh should not be blamed for any alleged indiscretions by members of his family who may have been angry, curious, upset, saddened, or affected in any number of other possible ways by the fact that Mr. Tunkara was testifying against Mr. Conteh.

(b): "Bah was killed one day while he was leaving work. Tunkara believes Bah was killed because he cooperated with the FBI."

Objection: Again, this statement calls for speculation, and the building of inferences upon inferences. The presentence investigation does not indicate how Mr. Ban was killed. Nevertheless, undersigned believes that Mr. Bah was killed in a traffic accident while back home in Gambia. Although any such death is unfortunate, Mr. Tunkara's speculative "belief" about how he believes Mr. Bah was killed or the circumstances leading up to Mr. Bah's death should in no way impact this Court's review of Mr. Conteh's situation.

¶139-142: The presentence report finds that Mr. Conteh should be assessed a four point enhancement based upon his Role in the Offense.

Objection: Any suggestion that Issa Conteh supplied checks to Michel Yanni or Keith Walker is purely speculative, based upon hearsay, and based upon self-serving declarations of witnesses who had previously given statements to

the FBI did not inculpate Mr. Conteh in any way.

In fact, strong evidence suggests that Mr. Yannie was dealing directly with people in New York, and receiving the checks directly from New York for distribution to his "runners", although evidence does exist also to suggest that Mr. Conteh may have introduced Mr. Yanni to those people in New York, such an introduction is not enough to establish guilt, let alone to establish a leadership role in the offense. In the tape recorded transcript of the conversation between Ikenna Myers and Mr. Conteh, Mr. Conteh clearly indicates that he has a number of a person named Hakim in New York who does deal in counterfeit checks. Mr. Conteh then provided that number to Mr. Myers, while at the same time indicating that Mr. Conteh did not deal directly in checks himself. Furthermore, at that time, Mr. Conteh expressed concern about a friend of his who had been deported, and a concern

about the fact that involvement in checks could lead to prison. Nevertheless, Mr. Conteh provided the name and phone number for a pager belonging to a person named Hakim in the New York area to Mr. Myers. Mr. Myers testified that he even attempted to contact that number, the number was no longer good, thus indicating yet again that Mr. Conteh was not actively involved in the conspiracy.

Furthermore, in the conversation with Mr. Myers, Mr. Conteh indicated that he had previously provided the number to Michel Yanni. Again, the fact that Mr. Conteh may have given a number or introduced Michel Yanni to people in New York who could supply counterfeit checks, does not make him a participant in the conspiracy, let alone a "leader" of the conspiracy.

Furthermore, entered into the record as Court's Exhibits are tapes and transcripts of conversations between Nath Chhuom and Michel Yanni, while

Nath Chhuom was working for the FBI. In those taped conversations, when Michael Yanni did not realize he was being taped, Nath Chhuom and Michel Yanni discussed their previously made trip to Portland, Oregon. In that conversation, Nath Chhuom asked Michel Yanni whether he was going to be going back to Oregon to see his connection in Oregon. It is undisputed that, at the time of the tape recorded conversation between Nath Chhuom and Michel Yanni, Issa Conteh was living with his family, and working in Columbus, Ohio. On the tape, Michel Yanni clearly says that his connection in Portland, Oregon was no longer there and that he had moved back to New York. Furthermore, Yanni speaks of his various trips to New York, presumably to pick up checks or make plans with his connection in New York. A review of the transcript contained in the record as a court's exhibit would be helpful to the formulation of this presentence investigation report. That transcript clearly indicates that Michel

Yanni was traveling back and forth to New York, dealing directly with a check supplier in New York, and that the person he was dealing with in New York more than likely the same person, or affiliated with the same person who he had dealt with in Portland, Oregon. Finally that conversation also makes it abundantly clear, by virtue of Michel Yanni's references to his trips to New York and the person who had been in Portland but had since moved to New York, that the connection providing the checks to this conspiracy in Columbus, Ohio was someone other than Issa Conteh.

The testimony of Mr. Tunkara, on the other hand, described in intimate detail a conspiracy that allegedly existed in Colorado back in the late 1990s. Again Defendant maintains that said testimony was not admissible against Defendant at trial, but it was admitted over Defendant's objection. Furthermore, Defendant denies the allegations about any alleged

conspiracy in Colorado. Nevertheless, the court was very clear about the fact that any such testimony, especially testimony regarding the alleged conduct of Issa Coteh in Colorado, can not be used to infer the same or similar conduct in Columbus, Ohio.

Therefore, Defendant maintains the evidence was insufficient to even convict him. However, notwithstanding the decision of the jury, the evidence introduced at trial against Defendant is clearly insufficient to establish any kind of leadership role on the part of Issa Conteh. Therefore, the four level enhancement articulated in paragraphs 139 through 142 are unwarranted, and Defendant objects accordingly.

¶143-144: Mr. Conteh should not receive a two level enhancement pursuant to Section 3C1.1 of the United States Sentencing Guidelines. Mr. Tunkara has maintained, and testified in court, that he received a message from his wife.

Furthermore, he indicated that his wife had received a phone call from Africa, allegedly from someone in Mr. Conteh's family. Mr. Conteh can not be held responsible for any indiscretions on the part of his family members. Absolutely no evidence exists to suggest that Issa Conteh had any role in any communication with Mr. Tunkara or his family. Likewise, any evidence suggesting that any such communication even took place is all based upon hearsay statements that come second and even third hand through Mr. Tunkara's wife. Finally, for the court to impose a two level enhancement on Mr. Conteh, the court must find that any communication, especially any threatening communication, with Mr. Tunkara was made by Mr. Conteh or at Issa Conteh's request. No such evidence exists. Mr. Tunkara himself did not even have any personal knowledge of any such communication. Therefore, any alleged threatening communication is purely speculative based upon hearsay

statements that must not be considered by the court. Furthermore, even if this court does consider the speculative hearsay statements about this alleged communication with Mr. Tunkara's family, this Court should not impose a two level enhancement based upon the fact that there is no evidence supporting the allegation that Mr. Conteh elicited or facilitated this communication in any way. The Court should remember that the brother of Issa Conteh, Mohammed Conteh, who currently resides in Africa, was friends with Mr. Tunkara from back in the days when they were in school together. Even if this Court finds that such a threatening communication did take place, this Court should not impose a two level enhancement on Issa Conteh for any alleged indiscretions by members of his family. This court should also keep in mind that Mr. Tunkara has been allowed to remain in this country, based in large part:, upon his claim that he would not be safe if he was deported back to Africa. Although Mr. Tunkara

is a convicted felon, for which deportation is probably required, Mr. Tunkara remains in this country legally, reaping the benefits of the American way of life without actually being a citizen, and it appears that he will continue to do so for the indefinite future. Mr. Tunkara, no doubt, recognizes the fact that his position is greatly enhanced in terms of his ability to remain in this country if the federal government believes that it is unsafe for him to be returned to Africa.

Consequently, although Mr. Tunkara's statements should be held unworthy of belief, the fact remains that even if the court finds Mr. Tunkara's statements in this regard credible, these statements do not establish sufficient evidence linking Issa Conteh to any activity that served to obstruct justice in any way.

Very truly yours,

/s/ Jonathan T. Tyack

Jonathan T. Tyack

JTT/dp

SENTENCING RECOMMENDATION

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO
UNITED STATES V. ISSA B. CONTEH,
DKT. # CR-2-03-140(001)

TOTAL OFFENSE LEVEL: 29
CRIMINAL HISTORY CATEGORY: I

	Statutory Provisions	Guideline Provisions	Recommended Sentence
CUSTODY	**Count 2, 3, 4, 5, 6, 7, 8, 9, 10, 21 and 22**: Not More than 10 years **Counts 1, 11, 12, 13, 14, 15, 16, 17, 18 and 19**: Not more than 30 years	87-108 months	97 months on all counts to run concurrently with each other

PROBATION	Ineligible	Ineligible	Not Applicable
SUPERVISED RELEASE	**Counts 2, 3, 4, 5, 6, 7, 8, 9, 10, 21 and 22**: Not more than 3 years **Counts 1, 11, 12, 13, 14, 15, 16, 17, 18 and 19**: Not more than 5 years	**Counts 2, 3, 4, 5, 6, 7, 8, 9, 10, 21 and 22**: 2-3 years **Counts 1, 11, 12, 13, 14, 15, 16, 17, 18 and 19**: 3-5 years	3 years on each count to run concurrently

FINE	**Counts 2, 3, 4, 5, 6, 7, 8, 9, 10, 21 and 22**: $250,000 **Counts 1, 11, 12,13, 14, 15, 16, 17, 18 and 19**: $1,000,000	$15,000 - $10,000,000	-0-
RESTITUTION	$319,991.55	$319,991.55	$319,991.55
SPECIAL ASSESSMENT	$2,100	$2,100	$2,100

Justification

Issa Conteh is before the Court for sentencing after having gone to trial and found guilty of 21 counts to include Conspiracy to Commit Money Laundering, Uttering and Possessing a Counterfeit Security, Bank Fraud, and Interstate Transportation of Counterfeited Securities. The facts of the case revealed the defendant acted as a leader of a large counterfeit check cashing ring conspiracy. The operation was sophisticated whereby Conteh had two other individuals recruit runners to deposit counterfeit checks into bank accounts followed by making withdrawals. Individuals were also recruited to solely cash counterfeit checks. Over $500,00 in counterfeit checks were negotiated, yet it was determined that the restitution figure is $319,991.55. An enhancement for obstruction of justice was applied due to vale threats made to a witness through Conteh's family.

Mr. Conteh is 31 years old. He is married with 4 children. It appears he was raised in a close knit family in Sierra Leone, Africa. He is a lawful permanent resident which could cause him to be deported based on this conviction. He has six years of education from Africa. He has never abuse alcohol or illicit substances. Due to the large amount of restitution owed, and the fact that his financial statement is incomplete, a fine is not recommended.

A sentence towards the center of the guideline range is recommended in this case. The reason for this was because the value of the funds laundered was $527,864.91 which is at the higher end of the range that gave him a three level enhancement in the calculations. However, this is his first known offense. In the event he is not deported, it is recommended he be closely monitored for continued illegal behavior.

Voluntary Surrender

Mr. Conteh is currently in federal custody. Therefore, voluntary surrender is a moot point.

Recommendation

It is respectfully recommended that sentence in this case be imposed as follows:

Pursuant to the *Sentencing Reform Act of 1984*, it is the judgement of the Court that the defendant, Issa B. Conteh, is hereby committed to the custody of the United States Bureau of Prisons, to be imprisoned for a term of **97 months on all counts, with each count to run concurrently**. Upon release from imprisonment, and in the event that he is not deported, the defendant shall serve a term of supervised release of **3 years on each count to run concurrently**. Within 72 hours

of release from the custody of the Bureau of Prisons, the defendant shall report to the probation office in the district to which he is released. If the defendant is deported, the commencement of the term of supervised release shall be tolled until such time he reenters the United States.

While on supervised release, the defendant shall not commit any federal, state or local crimes. He shall be prohibited from possessing a firearm or other dangerous device. He shall not possess a controlled substance. The Court finds that reliable information indicates a low risk of future substance abuse on the part of the defendant and suspends the requirements of mandatory drug testing as per 18 U.S.C. §3583(d). The defendant shall comply with the standard conditions of supervised release as adopted by this Court. The defendant shall also comply with the following special condition:

> The defendant shall provide all personal financial information upon the request of the U.S. Probation Office.

THE COURT FINDS the defendant does not have the ability to pay a fine. However, pursuant to 18 U.S.C. §3663A, the defendant is ordered to pay restitution in the amount of $319,991.55 to the victims of this offense. Payments shall be made jointly and severally with the respective codefendants and co-conspirators involved in this offense. Restitution is

due immediately with any unpaid balance to be paid as a condition of supervised release. Pursuant to 18 U.S.C. § 3612 (f)(3)(A), the Court waives the requirement of interest on any balance of restitution not paid within 15 days after judgement.

While incarcerated, if the defendant is working in a Non-UNICOR or Grade-5 UNICOR job, he shall pay $25 per quarter towards his restitution obligation. If working in a Grade-1-4 UNICOR job, the defendant shall pay 50% of his monthly pay towards the restitution obligation. Any change in this schedule shall be made only by order of this Court.

Within 30 days of the commencement of the term of supervised release, the probation officer shall recommend a payment schedule to the Court to satisfy any unpaid balance of restitution. The Court will enter an order establishing a schedule of payments.

IT IS ORDERED the defendant pay a special assessment in the amount of $2,100 which shall be due immediately.

Respectfully submitted,
/s/ Beth A. Harris
Beth A. Harris
U. S. Probation Officer

18 U.S.C.A. § 3553

United States Code Annotated

Title 18. Crimes and Criminal Procedure

Part II. Criminal Procedure

§ 3553. Imposition of a sentence

(a) Factors to be considered in imposing a sentence.--

The court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection. The court, in determining the particular sentence to be imposed, shall consider--

(1) the nature and circumstances of the offense and the history and characteristics of the defendant;

(2) the need for the sentence imposed--

(A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;

(B) to afford adequate deterrence to criminal conduct;

(C) to protect the public from further crimes of the defendant; and

(D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;

(3) the kinds of sentences available;

(4) the kinds of sentence and the sentencing range established for--

(A) the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines-

(i) issued by the Sentencing Commission pursuant to section 994(a)(1) of title 28, United States Code, subject to any amendments made to such guidelines by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) title 28); and

(ii) that, except as provided in section 3742(g), are in effect on the date the defendant is sentenced; or

(B) in the case of a violation of probation or supervised release, the applicable guidelines or policy statements issued by the Sentencing Commission pursuant to section 994(a)(3) of title 28, United States Code, taking into account any amendments made to such guidelines or policy statements by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28);

(5) any pertinent policy statement--

(A) issued by the Sentencing Commission pursuant to section 994(a)(2) of title 28, United States Code, subject to any amendments made to such policy statement by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28); and

(B) that, except as provided in section 3742(g), is in effect on the date the defendant is sentenced. [FN1]

(6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and

(7) the need to provide restitution to any victims of the offense.

(b) Application of guidelines in imposing a sentence.--

(1) In general.--Except as provided in paragraph (2), the court shall impose a sentence of the kind, and within the range, referred to in subsection (a)(4) unless the court finds that there exists an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that should result in a sentence different from that described. In determining whether a circumstance was adequately taken into consideration, the court shall consider only the sentencing guidelines, policy statements, and official commentary of the Sentencing Commission. In the absence of an applicable sentencing guideline, the court shall impose an appropriate sentence, having due regard for the purposes set forth in subsection (a)(2). In the absence of an applicable sentencing guideline in the case of an offense other than a petty offense, the court shall also have due regard for the relationship of the sentence imposed to sentences prescribed by guidelines applicable to similar offenses and offenders,

and to the applicable policy statements of the Sentencing Commission.

(2) Child crimes and sexual offenses.--

(A) [FN2] Sentencing.-- In sentencing a defendant convicted of an offense under section 1201 involving a minor victim, an offense under section 1591, or an offense under chapter 71, 109A, 110, or 117, the court shall impose a sentence of the kind, and within the range, referred to in subsection (a)(4) unless--

(i) the court finds that there exists an aggravating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that should result in a sentence greater than that described;

(ii) the court finds that there exists a mitigating circumstance of a kind or to a degree, that--

(I) has been affirmatively and specifically identified as a permissible ground of downward departure in the sentencing guidelines or policy statements issued under section 994(a) of title 28, taking account of any amendments to such sentencing guidelines or policy statements by Congress;

(II) has not been taken into consideration by the Sentencing Commission in formulating the guidelines; and

(III) should result in a sentence different from that described; or

(iii) the court finds, on motion of the Government, that the defendant has provided substantial assistance in the

investigation or prosecution of another person who has committed an offense and that this assistance established a mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that should result in a sentence lower than that described.

In determining whether a circumstance was adequately taken into consideration, the court shall consider only the sentencing guidelines, policy statements, and official commentary of the Sentencing Commission, together with any amendments thereto by act of Congress. In the absence of an applicable sentencing guideline, the court shall impose an appropriate sentence, having due regard for the purposes set forth in subsection (a)(2). In the absence of an applicable sentencing guideline in the case of an offense other than a petty offense, the court shall also have due regard for the relationship of the sentence imposed to sentences prescribed by guidelines applicable to similar offenses and offenders, and to the applicable policy statements of the Sentencing Commission, together with any amendments to such guidelines or policy statements by act of Congress.

(c) Statement of reasons for imposing a sentence.-- The court, at the time of sentencing, shall state in open court the reasons for its imposition of the particular sentence, and, if the sentence--

(1) is of the kind, and within the range, described in subsection (a)(4) and that range exceeds 24 months, the reason for imposing a sentence at a particular point within the range; or

(2) is not of the kind, or is outside the range, described in subsection (a)(4), the specific reason for the imposition of a sentence different from that described, which reasons must also be stated with specificity in the written order of judgment and commitment, except to the extent that the court relies upon statements received in camera in accordance with Federal Rule of Criminal Procedure 32. In the event that the court relies upon statements received in camera in accordance with Federal Rule of Criminal Procedure 32 the court shall state that such statements were so received and that it relied upon the content of such statements.

If the court does not order restitution, or orders only partial restitution, the court shall include in the statement the reason therefor. The court shall provide a transcription or other appropriate public record of the court's statement of reasons, together with the order of judgment and commitment, to the Probation System and to the Sentencing Commission,, [FN3] and, if the sentence includes a term of imprisonment, to the Bureau of Prisons.

(d) Presentence procedure for an order of notice.--Prior to imposing an order of notice pursuant to section 3555, the

court shall give notice to the defendant and the Government that it is considering imposing such an order. Upon motion of the defendant or the Government, or on its own motion, the court shall--

(1) permit the defendant and the Government to submit affidavits and written memoranda addressing matters relevant to the imposition of such an order;
(2) afford counsel an opportunity in open court to address orally the appropriateness of the imposition of such an order; and
(3) include in its statement of reasons pursuant to subsection (c) specific reasons underlying its determinations regarding the nature of such an order.

Upon motion of the defendant or the Government, or on its own motion, the court may in its discretion employ any additional procedures that it concludes will not unduly complicate or prolong the sentencing process.

(e) Limited authority to impose a sentence below a statutory minimum.--Upon motion of the Government, the court shall have the authority to impose a sentence below a level established by statute as a minimum sentence so as to reflect a defendant's substantial assistance in the investigation or prosecution of another person who has committed an offense. Such sentence shall be imposed in accordance with

the guidelines and policy statements issued by the Sentencing Commission pursuant to section 994 of title 28, Unites States Code.

(f) Limitation on applicability of statutory minimums in certain cases.-- Notwithstanding any other provision of law, in the case of an offense under section 401, 404, or 406 of the Controlled Substances Act (21 U.S.C. 841, 844, 846) or section 1010 or 1013 of the Controlled Substances Import and Export Act (21 U.S.C. 960, 963), the court shall impose a sentence pursuant to guidelines promulgated by the United States Sentencing Commission under section 994 of title 28 without regard to any statutory minimum sentence, if the court finds at sentencing, after the Government has been afforded the opportunity to make a recommendation, that--

(1) the defendant does not have more than 1 criminal history point, as determined under the sentencing guidelines;
(2) the defendant did not use violence or credible threats of violence or possess a firearm or other dangerous weapon (or induce another participant to do so) in connection with the offense;
(3) the offense did not result in death or serious bodily injury to any person;
(4) the defendant was not an organizer, leader, manager, or supervisor of others in the offense, as determined under the sentencing guidelines and was not engaged in a continuing

criminal enterprise, as defined in section 408 of the Controlled Substances Act; and

(5) not later than the time of the sentencing hearing, the defendant has truthfully provided to the Government all information and evidence the defendant has concerning the offense or offenses that were part of the same course of conduct or of a common scheme or plan, but the fact that the defendant has no relevant or useful other information to provide or that the Government is already aware of the information shall not preclude a determination by the court that the defendant has complied with this requirement.

FILED
OFFICE OF THE CLERK
SUPREME COURT, U.S.

No. 07-191

In the Supreme Court of the United States

ISSA B. CONTEH, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

PAUL D. CLEMENT
Solicitor General
Counsel of Record
Department of Justice
Washington, D.C. 20530-0001
(202) 514-2217

In the Supreme Court of the United States

No. 07-191

ISSA B. CONTEH, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

Petitioner contends that the standards applied by the court of appeals in reviewing his above-Guidelines sentence for unreasonableness are inconsistent with United States v. *Booker*, 543 U.S. 220 (2005). On June 11, 2007, this Court granted certiorari in *Gall* v. *United States*, No. 06-7949, to address the standards to be applied in reviewing a sentence outside the Guidelines for unreasonableness under *Booker*. Accordingly, the petition for a writ of certiorari should be held pending the Court's resolution of *Gall*, and then disposed of as appropriate in light of the decision in that case.*

* The government waives any further response to the petition unless this Court requests otherwise.

Respectfully submitted.

PAUL D. CLEMENT
Solicitor General

AUGUST 2007